TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 201.

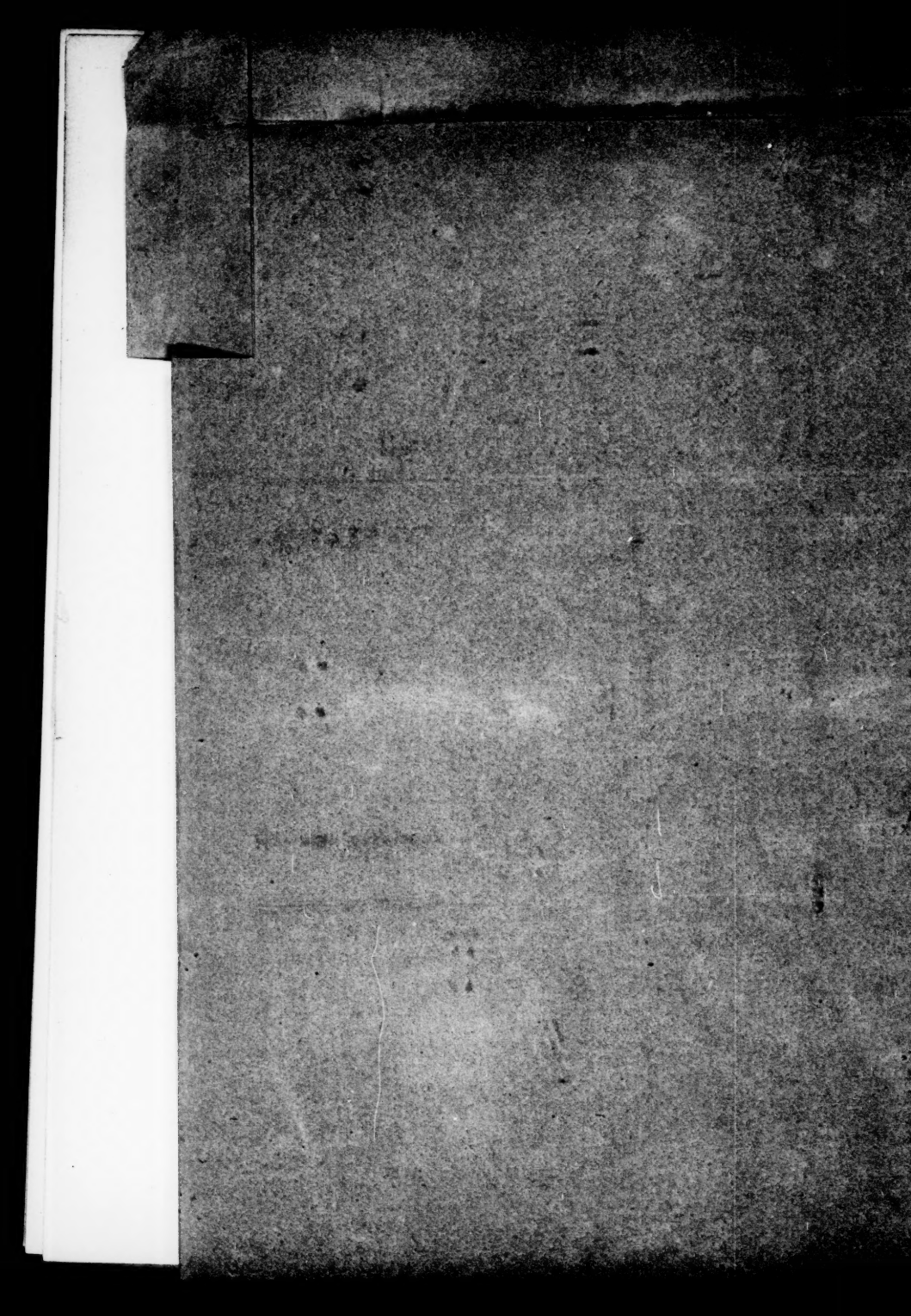
FERDINAND M. GOODRICH, APPELLANT,

vs.

LOGAN HUNTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 9, 1876.



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1 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

FERDINAND M. GOODRICH
vs.
LOGAN HUNTON. } No. 7168.

Transferred from the fourth district court for the parish of Orleans, State of Louisiana.
Transcript filed March 14th, 1874.

STATE OF LOUISIANA:

Fourth district court for the parish of Orleans.

Geo. L. Bright, esq., and Barrow & Pope, esqrs., for plaintiffs.

FERDINAND M. GOODRICH, APP'LEE,
vs.
LOGAN HUNTON, APP'T. } No. 42804.

J. Ad. Rozier, esqr., for defendant.

Petition.—Filed January 28th, 1874.

FERDINAND M. GOODRICH
vs.
LOGAN HUNTON.

2 To the honorable the judge of the fourth district court for the parish of Orleans:

The petition of Ferdinand M. Goodrich, a resident of Carroll, in this State, respectfully shows that on the 19th January, 1874, in the suit No. 17063 of the docket of this court, entitled Logan Hunton vs. Pilcher and Goodrich, judgment was rendered against your petitioner for the sum of $2,500 (twenty-five hundred dollars), with interest thereon at the rate of eight per cent. per annum from 1st day of May, 1861, until paid, and costs of suit, and was signed on the 23d January, 1874.

Your petitioner shows that said judgment was a confirmation of a default taken on 12th May, 1866, and is null and void, because at the time the petition and citation were served on your petitioner, to wit, on the 12th day of April, 1866, he was then a resident and had his domicil in the parish of Carroll, in this State, and this court could not exercise jurisdiction over him.

Because on and for some time before the 12th April, 1866, there existed no such firm as Pilcher & Goodrich, it having been dissolved and legal notice given thereof.

Because, before the rendition of said judgment of court on the seventh day of Dec., 1860, he individually, and as a member of the firm
3 of Pilcher and Goodrich, was, by the United States court for the district of Louisiana in bankruptcy, forever discharged from all debts and claims which by the bankrupt act are made provable against his estate and that of the firm of Pilcher and Goodrich, and which existed on the 28th day of February, 1868, on which day the petition for adjudication was filed by him.

Your petitioner shows that the pretended debt and claim of the plaintiff, Logan Hunton, was provable against his estate and that of the firm of Pilcher and Goodrich.

Your petitioner shows that he fears that the said Logan Hunton, in whose favor said judgment was illegally rendered, will record it in the mortgage office of this State, and will otherwise execute said judgment.

The premises considered, your petitioner prays that a writ of injunction issue enjoining said Logan Hunton from recording said judgment in any mortgage office in this State, and from executing said judgment in any manner; that said Logan Hunton be cited to answer this petition; that the injunction be made perpetual; and that it be ordered, adjudged, and decreed that the judgment in favor of said Logan
4 Hunton and against your petitioner on the 19th January, 1874, in the suit of Logan Hunton vs. Pilcher and Goodrich, No. 17063 of the docket of this court, is null and void.

And your petitioner prays for general relief.

(Signed) GEO. L. BRIGHT, *Att'y.*
" BARROW & POPE,
Att'ys for Pet'ner.

Affidavit.

Ferdinand M. Goodrich, sworn, says that all and singular the allegations in the foregoing petition are true.

(Signed) FER'D M. GOODRICH.

Sworn to and subscribed before me this 28th day Janu'y, 1874.

(Signed) W. L. EVANS,
Second Justice Peace for the Parish of Orleans, La.

Order.

Let a writ of injunction issue herein as prayed for and according to law, upon plaintiff giving bond with good and solvent security in the sum of one thousand dollars, conditioned as the law directs.

New Orleans, January 28th, 1874.

(Signed) B. L. LYNCH,
Judge.

Bond.—Filed January 28th, 1874.

Bond for writs of attachment and sequestration.

5 Know all men by these presents, that we, Ferdinand M. Goodrich, of Carroll Parish, as principal, and William A. Johnson, as surety, of the city of New Orleans, and State of Louisiana, are held and firmly bound unto Logan Hunton, of the parish of Orleans, and his successors, in the sum of one thousand dollars, lawful money of the United States of America, for which payment well and truly to be made to the said Logan Hunton, or his successors, we bind ourselves in solido, and each of our executors, administrators, heirs, and assigns, firmly by these presents, sealed with our seals, and dated the twenty-eighth day of January, 1874.

Whereas the said Ferdinand M. Goodrich has this day presented a petition to the fourth district court, for the parish of Orleans, praying a writ of injunction to issue in the suit of F. M. Goodrich vs. Logan Hunton, No. 17063:

Now the condition of the above obligation is, that we, the above-bound principal and surety, will well and truly pay to the said Logan Hunton, or his successors, for the benefit of any and all persons interested in said suit, all such damages as may be recovered against us, in case it should be decided that the said writ was wrongfully obtained.

6 (Signed) FERD M. GOODRICH.
(Signed) W. A. JOHNSON.

Signed, sealed and delivered in the presence of—
(Signed) JOHN H. ALLISON.
" W. M. ASBRIDGE.

Writ of injunction.—Issued January 28th, 1874.

Fourth district court for the parish of Orleans, State of Louisiana.

To Logan Hunton, esq., of the parish of Orleans, greeting:

FERDINAND M. HUNTON
vs.
LOGAN HUNTON. } No. 42804.

You are hereby commanded, enjoined, and restrained, in the name of the State of Louisiana, and of the fourth district court for the parish of Orleans, from recording the judgment rendered on the 19th of January, 1874, in the suit entitled Logan Hunton vs. Pilcher and Goodrich, No. 17063, of the docket of the fourth district court for the parish of Orleans, for the sum of $2,500, with interest thereon at 8% per annum, from 1st day of May, 1861, until paid, and costs of suit in any mortgage office in this State, and from executing said mortgage in any manner.

And what you do in the premises you make return thereof, together with this writ, to our said court, as the law directs.

Witness the honorable B. L. Lynch, judge of our said court, at
7 the city of New Orleans, this 28th day of January, in the year of our Lord eighteen hundred and seventy-four, and in ninety-eighth year of the Independence of the United States.

(Signed) J. O. CHALON,
Deputy Clerk.

Citation.—Issued January 29th, 1874.

Fourth district court for the parish of Orleans, the State of Louisiana.

FERDINAND M. GOODRICH
vs.
LOGAN HUNTON. } No. 42804.

To M'r Logan Hunton, New Orleans:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fourth district court for the parish of Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable B. L. Lynch, judge of the said court, the 29th day of January, in the year of our Lord 1874.

(Signed) F. F. PALMS,
Deputy Clerk.

8 *Sheriff's return on writ of injunction.*

Received January 28th, 1874, and on the same day, month, and year I served a copy of the within writ of injunction, at five minutes of two o'clock p. m., on Logan Hunton in person.

Ret. same day.

(Signed) M. McNAMARA, *Dy Sh'ff.*

Sh'ff fees, $2.00.

Sheriff's return on citation.

Received January 29th, 1874, and on the 30th day of same month and year I served a copy of the within citation and accompanying petition on Logan Hunton, defendant herein, in person.

Ret. same day.

(Signed) M. McNAMARA, *Dy Sh'ff.*

Sh'ff fees, $2.00.

Application of transfer.—Filed February 3rd, 1874.

Fourth district court for the parish of Orleans.

FERDINAND M. GOODRICH
vs.
LOGAN HUNTON. } No. 42804.

To the honorable the judge of the fourth district court for the parish of Orleans:

The petition of Logan Hunton, of Saint Louis, Missouri, respectfully shows that your petitioner is defendant in the above suit; that the
9 same was brought on the 28th day of January, 1874, in the fourth district court for the parish of Orleans, by the said plaintiff; and that the said plaintiff is, and was at the time of bringing the said suit, a citizen of the State of Louisiana, and your petitioner is, and was at the time of bringing said suit, a citizen of the State of Missouri.

And your petitioner further respectfully shows that the said suit has been instituted for the purpose of restraining and enjoining your petitioner from executing a certain judgment which he had obtained in this honorable court against the said Ferdinand M. Goodrich for the sum of twenty-five hundred dollars, with interest thereon at the rate of eight per cent. per annum until paid, and costs of suit, and to restrain petitioner from recording said judgment in any mortgage office of the State, with a prayer that said judgment be adjudged null and void, and that the matter in dispute in this suit, therefore, exceeds the sum of five hundred dollars.

And your petitioner further shows that the said suit has not been tried, but is pending for trial in said fourth district court for the parish of Orleans, and your petitioner desires to remove the suit before
10 the trial thereof into the circuit court of the United States to be held in the fifth circuit, district of Louisiana, in pursuance of the provisions of law.

And your petitioner offers herewith his bond, with Thomas Hunton as his surety, in the penal sum of two hundred and fifty dollars, conditioned according to law, which he prays may be accepted, and that the

said suit may be removed into the circuit court of the United States to be held in the district of Louisiana, fifth circuit, and that no further proceedings be had in this court in said suit, and he will pray, &c.

(Signed) LOGAN HUNTON.

(Signed) J. AD. ROSIER,
Attorney of Petitioner.

Affidavit.

Logan Hunton, the petitioner in the foregoing petition, being duly sworn, deposes and says that all the allegations contained in the said petition are true.

(Signed) LOGAN HUNTON.

Sworn to and subscribed before me February 3rd, 1874.

(Sig'd) J. O. CHALLON,
D'y Clerk.

Bond for removal.—Filed February 3d, 1874.

Fourth district court for the parish of Orleans.

11 FERDINAND M. GOODRICH } No. 42804.
vs.
LOGAN HUNTON.

We, Logan Hunton, of S't Louis, in the State of Missouri, as principal, and Thomas Hunton, of New Orleans, as surety, are held and firmly bound unto Ferdinand M. Goodrich, of the parish of Carroll, in the State of Louisiana, in the sum of two hundred and fifty dollars ($250.00), to be paid to the said Ferdinand M. Goodrich, his successors or assigns, for which payment well and truly to be made we hereby bind ourselves, our heirs, executors, and administrators firmly by these presents, sealed with our seals, dated the 3rd day of February, 1874.

Whereas a suit was brought on or about the 28th day of January, one thousand eight hundred and seventy-four, in the fourth district court for the parish of Orleans, Louisiana, by the said Ferdinand M. Goodrich against the said Logan Hunton, and the same is now pending for trial in New Orleans, and is removable into the circuit court of the United States for the fifth circuit, and district of Louisiana;

12 And whereas the said Logan Hunton has filed his petition in said fourth district court for the parish of Orleans for the removal of said suit into the next circuit court of the United States to be held in the fifth district of Louisiana:

Now, therefore, the condition of the above obligation is such, that if the above-bounden Logan Hunton or his legal representatives shall enter or cause to be entered in the circuit court of the United States for the fifth district of Louisiana on the first day of its stated session next ensuing, after the order of the said fourth district court for the parish of Orleans for the removal of said suit into said circuit court, copies of all process, pleadings, depositions, testimony, and other proceedings in said suit, and do or cause to be done such other appropriate acts as are required to be done upon the removal of a suit into the United States court, then the above obligation to be void; otherwise to remain in full force and virtue.

(Signed) L. HUNTON.
(Signed) THO. HUNTON.

STATE OF LOUISIANA,
Parish of Orleans:

Thomas Hunton, the surety in the foregoing obligation named, being duly sworn, deposes and says that he is a resident of the State of
13 Louisiana, and a householder therein, and is worth the sum of two hundred and fifty dollars over all his just debts and liabilities, and exclusive of property exempt by law from execution.

(Signed) THO. HUNTON.

Subscribed and sworn to before me this 2nd day of February, 1874.
(Signed)

Order of court issued Febru ry 4th, 1874.

Fourth district court for the parish of Orleans.

No. 42804.

FERDINAND M. GOODRICH
vs.
LOGAN HUNTON. } No. 42804.

An application for a transfer of this cause to the United States circuit court having been made, and the court being desirous of hearing parties before disposing of such application, it is ordered by the court, ex propria motu, that the same be fixed for hearing on Saturday, February 7th, 1874, at 11 o'clock a. m., and the parties notified thereof.

Notice of trial.—Issued February 4th, 1874.

STATE OF LOUISIANA:

14 Fourth district court for the parish of Orleans.

To George L. Bright, and Pope & Barrow, att'ys for pl'ff, and J. Adolphe Rozier, esq., att'y for def't.

F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 42804.

You are hereby notified that the application of transfer of the above entitled case is fixed for trial on Saturday, the 7th inst., at 11 o'clock a. m. Clerk's office, New Orleans, February 4th, 1874.

(Signed) OSCAR ARROYO,
Deputy Clerk.

Sheriff's return on notice of trial.

Received February 5th, 1874, and on the same day, month, and year, served a copy of the within notice of trial on Logan Hunton, defendant herein, through J. A. Rozier, esq., his attorney, in person, who accepted service of the same.

Ret'd same day.
S'ff fees, 50c.

(Signed) FRANK PFISTER,
D'y Sh'ff.

And the same day, month and year served a copy of the within notice of trial on F. M. Goodrich, plaintiff herein through G. L. Bright, esq., his attorney in person, who accepted of the service.

Ret. same day.

Sh'ff fees, 50.

(Signed) S. E. CROZAT,
D'y Sheriff.

15 *Application continued, as per minutes of February 9th*, 1874.

The application made by defendant, for the transfer of this case to the circuit court of the United States to be held in the district of Louisiana, fifth circuit, came up this day for trial. Defendant present in person; plaintiff absent and not represented, when after hearing pleading and arguments by defendant, on his motion the hearing of said application was continued to Wednesday next, the 11th inst., at 11 o'clock a. m.

Order of transfer.—Issued February 11th, 1874.

Fourth district court, for the parish of Orleans.

FERDINAND M. GOODRICH
vs.
LOGAN HUNTON. } No. 42804.

Upon reading and filing the petition of the above-named Logan Hunton, defendant herein, for the removal of this suit into the circuit court of the United States, for the district of Louisian, in the fifth circuit, in pursuance of the laws of the United States relating to the removal of suits from the State courts, and upon filing the security
16 offered by said defendant according to the requirement of said laws, and on motion of J. Ad. Rozier, attorney of the defendant, it is ordered that the said security be accepted and the said suit be removed into the next circuit of the United States to be held in the said district of Louisiana, and that no further proceedings be had in said suit in this court.

Witness the honorable B. L. Lynch, judge of the fourth district court, for the parish of Orleans, and the seal of the court is hereunto affixed on this 11th day of February, in the year eighteen hundred and seventy-four, in the city of New Orleans, State of Louisiana.

[SEAL.] (Signed) B. L. LYNCH,
Judge of the Fourth District Court of the Parish of Orleans.

Certificate.

STATE OF LOUISIANA:

Fourth district court, for the parish of Orleans.

I, Edward De Blois, clerk of the fourth district court for the parish of Orleans, do hereby certify that the above and foregoing fourteen pages do contain a full, true, correct and complete transcript of all the proceedings had, of all the documents filed, and of all the evidence
17 adduced in the trial of the cause wherein Ferdinand M. Goodrich is plaintiff and Logan Hunton, defendant, instituted in the said

fourth district court for the parish of Orleans, under the number 43804.

In testimony whereof I have hereunto set my hand and affixed the seal of the said fourth district court at the city of New Orleans, on this twenty-first day of February in the year of our Lord one thousand eight hundred and seventy-four, and in the ninety-eighth of the Independence of the United States.

[SEAL.] (Signed) ED. DE BLOIS,
Clerk.

Rule and grounds for dismissal.—Entered and filed March 21st, 1874.

U. S. circuit court for the 5th circuit and district of Louisiana.

F. M. GOODRICH } *vs.* } No. 7168.
LOGAN HUNTON. }

On motion of Geo. L. Bright, att'y for the plaintiff, and on showing to the court that this cause was transferred on motion of the defendant to this court from the fourth district court for the parish of Orleans. It is ordered that the defendant, Logan Hunton, or his att'y, J. Ad.
18 Rozier, show cause on 28th inst., at 11 a. m., why it should not be dismissed on the grounds:

1st. An appeal is pending to the supreme court of the State of Louisiana taken from the order transferring it to this court.

2d. This court is without jurisdiction.

Motion and order. Rule fixed for the 28th extended to 30th March, 1874.—Extract from the minutes March 24th, 1874.

Circuit court of the United States, fifth circuit and district of Louisiana, November term, 1873.

NEW ORLEANS, *Tuesday, March 24th*, 1874.

Court met pursuant to adjournment.

Present, Hon. W'm B. Woods, circuit judge. Hon. E. H. Durell, district judge.

Proceedings before Judge Durell.

F. M. GOODRICH } *vs.* } No. 7168.
LOGAN HUNTON. }

By consent of counsel the rule in this case fixed for the 28th is transferred to 30th March, 1874.

Continuance of rule.—Extract from the minutes, March 30th, 1874.

F. M. GOODRICH } *vs.* } No. 7168.
LOGAN HUNTON. }

By consent of counsel the rule in this case is continued till the 7th of April, 1875, at 11 a. m.

19 *Rule to dismiss fixed by consent.—Extract from the minutes, April 18th, 1874.*

F. M. GOODRICH
vs. No. 7168.
LOGAN HUNTON.

By consent of counsel the rule to dismiss suit is set for hearing on 2d May, 1874, at 11 a. m.

Exceptions.—Filed April 27th, 1874.

Circuit court of the United States, fifth judicial circuit and district of Louisiana.

F. M. GOODRICH
vs. No. 7168.
LOGAN HUNTON.

Logan Hunton, defendant in the above-entitled suit, by protestation not confessing or acknowledging all or any of the matters and things in the petition to be true in such manner & form as the same are therein and thereby set forth, except to the said petition, and says that the said petition discloses no cause of action.

Defendant, reserving the right to answer the said petition in case this exception is overruled, prays the judgment of this court whether he shall be compelled to answer the said petition, and he prays to be hence dismissed with his costs.

(Signed) J. AD. ROZIER AND THO'S HUNTON,
Attorneys of Defendant, Logan Hunton.

20 *Motion and order, exception fixed.—Extract from the minutes, May 5th, 1874.*

F. M. GOODRICH
vs. No. 7168.
LOGAN HUNTON.

On motion of J. Ad. Rozier, esqr., ordered that the exception herein be fixed for Tuesday, the 12th instant at 11 a. m., and that the adverse party be notified.

Continuance of rule and exception.—Extract from minutes, May 12th, 1874.

F. M. GOODRICH
vs. No. 7168.
LOGAN HUNTON.

By consent of counsel the exception and rule herein are continued till the 16th instant at 11 a. m.

Motion and order, exception fixed.—Extract from the minutes, May 21st, 1874.

F. M. GOODRICH
vs. No. 7168.
LOGAN HUNTON.

On motion of J. Ad. Rozier, attorney for defendant, ordered that the

exception herein be set for trial on the 26th instant at 11 a. m., and that plaintiff be notified.

21 *Motion and order, exception fixed.—Extract from the minutes, May 26th, 1874.*

F. M. GOODRICH
vs. } No. 7168.
LOGAN HUNTON.

On motion of J. Ad. Rozier, att'y for defendant, ordered that the exception be assigned for trial on Monday, June 1st, 1874, at 11 a. m., and that plaintiff be notified.

Submission of rule and exception.—Extract from the minutes, June 1st, 1874

F. M. GOODRICH
vs. } No. 7168.
LOGAN HUNTON.

The rule and exception herein came up.
Pres't, G. L. Bright, J. Ad. Rozier.
When, after hearing the pleadings and argument, the court took time to advise.

Order, rule dismissed and exception overruled.—Extract from the minutes, June 5th, 1874.

F. M. GOODRICH
vs. } No. 7168.
LOGAN HUNTON.

The court being of opinion that it has jurisdiction in the prem-
22 ises, it is ordered that plaintiff's rule to dismiss be discharged.
It is further ordered that defendant's exception be overruled with costs, and that 20 days be allowed him to answer.

Rule to dissolve injunction.—Entered and filed June 13th, 1874.

U. S. circuit court.

F. M. GOODRICH
vs. } No. 7168.
LOGAN HUNTON.

On motion of J. Ad. Rozier and F. Hunton, att'ys for plaintiff, it is ordered that the defendant show cause on Thursday, the 18th day of June, 1874, at 11 o'clock a. m., why the injunction which issued herein should not be dissolved and set aside, because the bond given by defendant is insufficient in amount to authorize the issuance of an injunction, and because the surety on the bond is insolvent.

Marshal's return.

Received June 13th, 1874, by the U. S. marshal, and on the 15th day of

same month and year served a copy of within motion on Geo. L. Bright, att'y named herein, by handing the same to him in person.

New Orleans, June 15th, 1874.

(Signed) S. W. REED,
Dy U. S. Marshal.

23 *Rule to dissolve injunction.—Entered & filed June 18th, 1874.*

U. S. circuit court.

FERDINAND M. GOODRICH *vs.* LOGAN HUNTON. } No. 7168.

On motion of J. Ad. Rozier and Thomas Hunton, attorneys for Logan Hunton, it is ordered that plaintiff show cause on Tuesday, the 23d instant, at 11 o'clock, why the injunction herein should not be dissolved, because, 1st, the bond is for an amount insufficient to authorize an injunction; 2d, because the surety on the bond is insolvent.

Marshal's return.

Received June 19th, 1874, by the U. S. marshal, and on the 20th day of the same month and year served a copy of within motion, &c., on Geo. L. Bright, attorney named herein, by handing the same to him in person.

New Orleans, June 20th, 1874.

(Signed) S. W. REED,
Dep. U. S. Marshal.

24 *Answer.—Filed November 16th, 1874.*

U. S. circuit court.

FERDINAND M. GOODRICH *vs.* LOGAN HUNTON. } No. 7168.

The defendant, by his attorney, now and at all times saving and reserving unto himself all benefit and advantage of the exception hereinbefore filed to the petition of plaintiff and not waiving the same, for answer to the petition of plaintiff, says he denies all and singular the allegations therein contained except as hereinafter specially admitted.

He says that the said defendant did recover a judgment against the plaintiff, F. M. Goodrich, in the fourth district court of New Orleans, on the 19th day of January, 1874, which was signed on the 23d of January, 1874, for $2,500.00, with interest from May 1st, 1861, at the rate of eight per cent. per annum & costs; that said suit was brought against said Goodrich and Mason Pilcher upon a note of the firm of Pilcher & Goodrich, of which firm, which was domiciled in New Orleans, the said Goodrich was a member and partner; the said firm was a commercial partnership.

25 This defendant says farther, that the said judgment of the fourth district against the said Goodrich was regular, and is valid, and rendered after due and legal citation of said Goodrich.

Wherefore this defendant prays that the demand of plaintiff be rejected, and that he pay costs.

(Signed) J. AD. ROZIER,
(") THO. HUNTON,
For Def't.

Motion and order.—Rule fixed.—Extract from the minutes, March 15th, 1875.

Circuit court of the United States, fifth circuit and district of Louisiana, November term, 1874.

NEW ORLEANS, *Monday, March 15th*, 1875.

Court met pursuant to adjournment.
Present, Hon. W'm B. Woods, circuit judge.

F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 7168.

On motion of defendant, by his attorney, it is ordered that the motion to dissolve the injunction herein, which was filed on the 18th June, 1874, be fixed for trial on the 23d day of March, 1875, at 11 o'clock a. m., and that the plaintiff or his attorney be notified.

26 *Rule for contempt, entered and filed March 17th*, 1875.

U. S. circuit court, district of Louisiana.

F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 7168.

On motion of Geo. L. Bright, att'y for the plaintiff, and on shewing to the court that the defendant, Logan Hunton, has, since the service of the writ of injunction upon him, violated said injunction in this, that on the 3rd February, 1874, he recorded the judgment mentioned in the petition of the plaintiff in the mortgage office for the parish of Carroll: It is ordered that the said Logan Hunton show cause on Tuesday, 23rd March, 1875, 11 a. m., why he should not be punished for a violation of said injunction, and why the recording of said judgment should not be immediately cancelled and annulled.

Marshal's return on rule.

Received March 18th, 1875, and on the same day served a copy hereof on Logan Hunton, by handing it to him in person, in
27 this city.
New Orleans, March 18, 1875.
(Signed) JOHN FAHY,
D'y Marshal.

Affidavit of Geo. L. Bright.—Filed March 23rd, 1875.

U. S. circuit court, fifth circuit and district of Louisiana.

F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 7163.

G. L. Bright, being sworn, says that he is the counsel for the plaintiff, now absent from the city of New Orleans, and that the facts stated in the rule herein taken on 17th March, 1875, are true, to the best of his knowledge and belief.

(Signed) G. L. BRIGHT.

Sworn to & subscribed before me this 23d March, 1875.

(Signed) K. LOEW, *U. S. C.*

Three documents for plaintiff in rule.—Filed March 23d, 1875.

Doc't 1.

THE STATE OF LOUISIANA:

Fourth district court, for the parish of Orleans.

I hereby certify, that on the nineteenth day of January, 1874
28 judgment was rendered in this court in the following entitled suit, in the words and figures following, to wit:

LOGAN HUNTON
vs.
PILCHER & GOODRICH. } No. 17063.

On motion of J. Ad. Rozier, esq., of counsel for plaintiff, and upon proceedings, due proof of plaintiff's demand, and the law and the evidence being in his favor, it is ordered and adjudged and decreed, that the judgment by default herein, entered on the 12th day of May, 1860, against defendants, Mason Pilcher and Ferdinand M. Goodrich, in solido and as members of the late commercial firm of Pilcher & Goodrich, for the sum of twenty-five hundred dollars, with interest thereon at the rate of eight per cent. per annum from the 1st day of May, 1861, until paid, and costs of suit.

Judgment rendered 19th, 1874.

Judgment signed January 23rd, 1874.

(Signed) B. L. LYNCH, *Judge.*

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this twenty-third day of January, in the year of our Lord one thousand eight hun-
29 dred and seventy-four, and the 98th year of the Independence of the United States.

F. S. PALMS,
Deputy Clerk.

STATE OF LOUISIANA,
Parish of Carroll:

I, Marion A. Sweet, recorder in and for said parish and State, duly

commissioned and sworn, do hereby certify that the foregoing is a true and correct copy of the judgment of record in my office, in mortgage book L, folio 453, recorded February 3rd, 1874.

Given under my hand and seal of office this 6th day Nov., 1874.

[SEAL.] M. A. SWEET,
Recorder.

Doc't 2.

4th dist. court, parish of Orleans. Transferred to the circuit court of the United States for the State of Louisiana.

LOGAN HUNTON
vs.
PILCHER & GOODRICH.

M'r LOGAN HUNTON:

D'R SIR: After you were enjoined from executing the judg't rendered in the suit of Logan Hunton vs. Pilcher & Goodrich, and specially enjoined from recording said judgment in any mortgage office of any parish in this State, you did, in violation of said injunction, record
30 said judgment in the office of the recorder for the parish of Carroll, on the 3rd day of February, 1874, in mortgage book L, folio 453.

As soon as the court opens I intend to proceed against you for a violation of the injunction; and now, to remove any excuse that you may have for recording it, I request that you immediately cause the said record to be cancelled and annulled, and that you furnish me with the necessary documents and money to enable me to have said recording cancelled and annulled.

And I do hereby notify you that I will hold you responsible for the damages I have suffered and may hereafter suffer by reason of said recording.

New Orleans, Feb'ry 2d, 1875.

(Signed) FERD. M. GOODRICH,
No. 34 Perdido Street.

Doc't 3.

N. O., *Feb.* 3, 1875.

M'r F. M. GOODRICH:

The paper you handed to me yesterday comes in such a questionable shape that I do not know how to treat it.

I find difficulty in determining whether I should regard it as a
31 legal notice or a threatening letter, and whether you expected a reply. Upon the whole, I conclude that courtesy requires some answer.

You assert that after I was enjoined from executing a judgment rendered in my favor against Pilcher & Goodrich, and specially enjoined from recording the same in any mortgage office of any parish in this State, in violation of said injunction I did record the same in the office of the recorder for the parish of Iberville on the 3rd day of February, 1874.

To this I reply, that it has been the habit of my life to render obedience to all lawful orders and decrees of courts, and I aver that the copy

of the said judgment was mailed under cover to the recorder for the parish of Iberville, by an attorney-at law then in the office of my brother, Thomas Hunton, not after, but before the injunction was obtained. I do not know when it was actually recorded.

You are pleased to inform me that as soon as the court opens you will proceed against me for a violation of said injunction. I do not propose to make any effort to prevent you from proceeding.

Then, instead of paying what you owe me, you request me to
32 furnish you with the necessary documents and money to enable you to have the recording cancelled. This I must decline to do. If any money passes between us, I think it ought to be from you to me.

You also kindly notify me that will hold me responsible for all damages you have suffered or may hereafter suffer by reason of said recording.

I trust I shall be able to pay any damages you may recover against me on account of my efforts by regular process of law to collect from you a debt which you owe me and ought long since to have paid.

It may not be amiss for me to inform you that as soon as the court opens my attorney will move to dissolve your injunction unless you give good and sufficient security.

Respectfully, yours,
(Signed) LOGAN HUNTON.

Order on rules.—Extract from the minutes, March 23d, 1875.

F. N. GOODRICH
vs. } 7168.
LOGAN HUNTON.

33 The rule for contempt, taken for 17th instant, and the rule to dissolve the injunction, taken on 13th June, 1874, were called up (G. L. Bright, for Goodrich; J. Ad. Rozier & Tho's Hunton, for Logan Hunton; Logan Hunton in P. P.), when, after hearing the evidence, it is ordered by the court that Ferdinand M. Goodrich do, within 10 days, furnish bond in the sum of $7,000, with good and solvent security, conditioned to answer all damages the defendant may have sustained in case it should be decided that the injunction was wrongfully obtained, and upon the filing of such bond the court will direct the defendant, Hunton, to cancel the recording of the judgment mentioned in pl'ff's petition in the mortgage office of Carroll Parish, and in default of so doing he shall be considered in contempt.

It is further ordered that the motion to dissolve the injunction be continued.

Bond of Goodrich for damages on injunction.—Filed April 2d, 1875.—Recorded in book 4, folio 94.

FERD. M. GOODRICH
vs. } No. 7168.
LOGAN HUNTON.

34 UNITED STATES OF AMERICA:

Know all men by these presents, that we, Ferdinand M. Goodrich, as principal, and Benjamin Gerson and Charles Chaffe, both of the city of New Orleans, are held and firmly bound, jointly and severally, unto

Logan Hunton in the sum of seven thousand dollars, lawful money of the United States of America, to be paid to the said Logan Hunton, heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us, by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the second day of April, in the year of our Lord eighteen hundred and seventy-five.

Whereas, by an order made by the U. S. court on 23d March, 1875, the plaintiff, F. M. Goodrich, was ordered to file within ten days a bond for $7,000, with good and solvent surety, conditioned to answer all damages def't may have sustained in case it should be decided that the injunction was wrongfully obtained.

In compliance with that order this bond is now filed.

Now the condition of the above obligation is that we, the above-
35 bounden F. M. Goodrich and Benjamin Gerson and Charles Chaffe, will well and truly pay to the said Logan Hunton, the defendant in said injunction, all such damages as he may recover against us in case it should be decided that the said injunction was wrongfully obtained.

(Sig'd)	FERD. M. GOODRICH.	[L. S.]
(")	BEN. GERSON.	[L. S.]
(")	CHA'S CHAFFE.	[L. S.]

Signed, sealed, and delivered in the presence of—
F. B. VINOT.

Benjamin Gerson, surety on the within bond, being duly sworn, says that he is worth the sum of seven thousand dollars over and above all his debts and liabilities.

(Signed) BEN. GERSON.

Sworn to and subscribed before me this 2d April, 1875.

(Signed) F. B. VINOT,
U. S. Comm'r.

Charles Chaffe, surety on the within bond, being duly sworn, says that he is worth the sum of seven thousand dollars over and above all his debts and liabilities.

(Signed) CHA'S CHAFFE.

Sworn to and subscribed before me this 2d day of April, 1875.

(Signed) F. B. VINOT,
U. S. Comm'r.

36 *Order to cancel judicial mortgage.—Entered and filed April 6th 1875.*

U. S. circuit court.

F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 7168.

On motion of Geo. L. Bright, counsel for the plaintiff, and on filing the bond he is required to file by the order made on the 23rd March, 1875, it is now ordered that the inscription of the judgment rendered in the suit of Logan Hunton vs. F. M. Goodrich, No. 17063, of the docket of the 4th district court for the parish of Orleans, in the office

of the recorder of mortgages for the parish of Carroll, be cancelled and annulled.

And it is further ordered that the defendant, Logan Hunton, cancel and annul the inscription of said judgment as aforesaid within days from this day, and that he file in this court a certificate from the recorder of mortgages of the parish of Carroll, showing that the inscription of said judgment has been cancelled and annulled.

Order continuance and case reassigned.—Extract from the minutes, April 21st, 1875.

37 F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 7168.

For want of time it is ordered that the cause be reassigned for the 12th May, 1875, at 11 a. m., and that the parties be notified.

Release of mortgage.—Filed April 22d, 1875.

F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 7168.

STATE OF LOUISIANA,
Parish of Carroll:

I hereby certify that I have this day erased and cancelled, so far as Ferdinand M. Goodrich is concerned, the judgment recorded Febr'y 3d, 1874, in mortgage book L, folio 453, styled Logan Hunton vs. Pilcher and Goodrich, No. 17063, of the docket of the fourth district court for the parish of Orleans, State of Louisiana, in obedience to an order from the hon. the United States circuit court for the 5th circuit & district of Louisiana, issued in suit No. 7168, on the 6th day of April, 1875; and in obedience to the written authority and demand of Logan Hunton, plaintiff, in said suit No. 17063.

In testimony whereof I hereto sign my name officially and affix
38 the seal of the recorder's office of said parish of Carroll, at the town of Providence, in said parish and State, on this 12th day of April, A. D. 1875.

[SEAL.] (Signed) W. T. SMITH,
D'y Recorder.

Motion and order, case fixed.—Extract from the minutes, May 12th, 1875.

F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 7168.

On motion of Geo. L. Bright, att'y for plaintiff, ordered that the cause be, for want of time, reassigned for the 28th instant, at 11 o'clock a. m., and that the defendant be notified.

Replication.—Filed May 26th, 1875.

U. S. circuit court. In equity.

F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 7168.

The replication of F. M. Goodrich, complainant, to the answer of Logan Hunton, defendant.

This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants for replication thereunto saith, that he doth, and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is true; all which matters and things this repliant is ready to aver, maintain, and prove, as this hon. court shall direct, and humbly prays as in and by his said bill he hath already prayed.

(Signed) GEO. L. BRIGHT,
Solicitor.

Entry in chancery order book.—May 26th, 1875.

F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 7168.

The complainant herein has this day filed his replication to the answer of Logan Hunton, defendant.

Case fixed by consent.—Extract from the minutes, May 28th, 1875.

F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 7168.

By consent of counsel the cause is set for trial on 2d June, 1875, at 11 o'clock a. m.

Motion and order to amend petition.—Entered and filed June 7th, 1875.

U. S. circuit court.

F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 7168.

On motion of J. Ad. Rozier and Tho's Hunton, atty's for defendants, it is ordered that the plaintiff do amend his petition and pleadings herein to conform to the equity practice of this court on or before the firs

Monday of November, 1875, and in default thereof that his suit be dismissed.

It is further ordered that Geo. L. Bright, esq., attorney of plaintiff, be notified of this motion.

Marshal's return on motion.

Received June 9th, 1875, by the U. S. marshal and on the 12th
41 day of same month and year, served a copy of the within motion & order on the within named Geo. L. Bright, by handing the same to him in person at his office in this city.

(Signed) C. R. STEELE,
Dy Marshal.

Bill of complaint.—Filed September 30th, 1875.

To the circuit court of the United States, fifth circuit & district of Louisiana. In equity.

F. M. GOODRICH
vs. } 7168.
LOGAN HUNTON.

Frederick M. Goodrich, of Carroll Parish, and a citizen of the State of Louisiana, shews: That this suit was pending in the 4th district court for the parish of Orleans, State of Louisiana, and the defendant wrongfully removed it to this court; and the record having been filed in this court, in obedience to the order of this court made on 7th June, 1875, ordering "that the plaintiff do amend his petition and pleadings herein to conform to the equity practice of this court on or before the first Monday of November, 1875, and in default thereof that his suit be
42 dismissed," the plaintiff now repeats the allegation of his petition, and to make it according to the practice and pleadings in equity, says, Frederick M. Goodrich, of Carroll Parish, and a citizen of the State of Louisiana, brings this his bill against Logan Hunton, a resident and citizen of the State of Missouri.

And thereupon your orator complains and says, that on the 19th January, 1874, in the suit No. 17063 of the docket of the 4th district court for the parish of Orleans, entitled Logan Hunton vs. Pilcher and Goodrich, judgment was rendered against your orator for the sum of $2,500 (twenty-five hundred dollars), with interest thereon at the rate of eight per cent. per annum from 1st day of May, 1861, until paid, and costs of suit, and was signed on 23d January, 1874.

Your orator shows that said judgment was a confirmation of a default taken on 12th May, 1866, and is null and void because at the time the petition and citation were served on your petitioner, to wit, on the 12th day of April, 1866, he was then a resident and had his domicil in the parish of Carroll, in this State, and the 4th district court for the parish of Orleans was without jurisdiction, and by the laws of Louisiana said judgment is null and void.

43 Your orator shows that said judgment is null and void—

Because before and on the 12th day of April, 1866, the day when it is pretended your orator was cited to answer in the aforesaid suit, the firm of Pilcher & Goodrich, the defendant in said suit, had been dis'olved and legal notice given thereof by publication in several

papers published in the city of New Orleans, where said firm was domiciled.

Because before the rendition of said judgment, to wit, on the 17th day of Dec'r, 1868, your orator, individually and as a member of the firm of Pilcher & Goodrich, was by the United States district court for the district of Louisiana, in bankruptcy, forever discharged from all debts and claims which by the bankrupt act are made provable against his estate and that of the firm of Pilcher and Goodrich, and which existed on the 28th day of February, 1868, on which day the petition of adjudication was filed by him.

Your orator shews that the pretended claim of the plaintiff, Logan Hunton, was provable against his estate and that of the firm of Pilcher and Goodrich.

Your petitioner shews that he fears that the said Logan Hunton, in whose favor said judgment was illegally rendered, will record it in the mortgage office of this State, and will otherwise execute said judgment.

44 The premises considered, your orator prays that the writ of injunction issued by the fourth district court for the parish of Orleans be maintained and made perpetual, and for judgment as is prayed for in said petition, ordering, adjudging, and decreeing that the judgment in favor of said Logan Hunton, and against your orator, on the 19th January, 1874, in the suit of Logan Hunton vs. Pilcher & Goodrich, No. 17063 of the docket of this court, is null and void; and that your orator shall have generally such other and further relief as the nature of his case may require.

Therefore will your honor grant unto your orator the writ of subpœna issuing out of and under the seal of this court, to be directed to said defendant, Logan Hunton, commanding him by a certain day, and under a certain penalty therein inserted, to appear before your honor in the circuit court of the United States for the fifth circuit and district of Louisiana, then and there answer the premises, and abide the order and decree of the court.

Sept'r 29, '75.

(Signed) GEO. L. BRIGHT,
Sol'r for Pl'ff.

45 *Subpœna in chancery.—Issued September 30th*, 1875. *Returned and filed Octo. 25th*, 1875.

F. M. GOODRICH
vs. } No. 7168.
LOGAN HUNTON.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Logan Hunton, a resident and citizen of the State of Missouri, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of November, 1875, then and there to answer a bill in chancery, filed against him, wherein Ferdinand M. Goodrich, a citizen of the State of Louisiana, is complainant, and said Logan Hunton is defendant.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the
46 Supreme Court of the United States of America, this 30th day of September, in the year of our Lord one thousand eight hundred and seventy-five, and the 100th year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of November, 1875, otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received September 30th, 1875, by the U. S. marshal, and on the 22d day of October, 1875, served a copy hereof on Logan Hunton, within named, by handing the same to J. Ad. Rozier, the attorney of record for said Logan Hunton, who is absent from the district of Louisiana.

(Signed) S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y Marshal.

47 *Answer.—Filed November 22d, 1875.*

United States circuit court for the district of Louisiana, fifth circuit. In equity.

FERDINAND M. GOODRICH *vs.* LOGAN HUNTON. } No. 7168.

The answer of Logan Hunton to the bill of complaint of Frederick M Goodrich, plaintiff.

This defendant, saving to himself all manner of advantage of exception that can be had or taken to the errors, uncertainties, or imperfections of said bill, for answer thereto, or to so much as he is advised it is material for him to answer, answering, saith:

That he was the holder and owner of a promissory note for the sum of twenty-five hundred dollars, made and signed by the commercial firm of Pilcher & Goodrich, dated in the city of New Orleans, in the State of Louisiana, on the twenty-sixth day of January, in the year eighteen hundred & sixty-one, whereby the said firm promised to pay to the order of the said firm (themselves) on the first day of May, eighteen hun-
48 dred and sixty-one, the said sum of money, with interest at the rate of eight per cent. per annum, after maturity until paid, and afterwards the said firm endorsed the said note in blank, and defendant in good faith and for a valuable consideration became the holder and owner of the said note.

That defendant, at the maturity of said note, made a demand of payment of the said firm, makers of said note, but that the said firm wholly neglected to pay the said note, whereupon defendant instituted a

suit in the fourth district of New Orleans, and in and for the State of Louisiana, a competent court, against the said firm, which was composed of Mason Pilcher and Ferdinand M. Goodrich, and who were doing business in the said city of New Orleans, being engaged in the factorage and commission business.

That the said firm was located, did its business aforesaid, and was domiciliated in the said city of New Orleans.

That on the 10th day of April, in the year eighteen hundred and sixty-six, defendant caused suit to be instituted in the said fourth district court of New Orleans, on said note, and that both the said Pilcher and the said Goodrich were duly cited to appear and answer the petition
49 therein filed, two citations were regularly issued and respectively addressed to the said Mason Pilcher and Ferdinand M. Goodrich, who were both personally served with copies of the petition and citations respectively addressed to each one of them, were respectively and personally served on them on the eleventh day of April, in the year eighteen hundred and sixty-six.

That the said citations summoned them to comply with the demand contained in the petition or to deliver their answer, but that the said Goodrich & Pilcher wholly neglected to make answer, and thereupon a judgment by default was rendered by the said fourth district court of New Orleans on the 12th day of May, in the year eighteen hundred and sixty-six, after the legal delay for answering had expired.

This defendant further says that after a long delay, finding that the said Goodrich and the said Pilcher had taken no steps to have said judgment by default set aside and vacated, as he had a right to do, upon filing an answer and finding that the said Goodrich and Pilcher had interposed no answer, plea, or exception or defense in the said cause,
50 this defendant caused the said judgment by default against Goodrich & Pilcher to be confirmed, first proving before the court the said demand, and thereupon the said court ordered, adjudged, and decreed, on the 23rd day of January, in the year eighteen hundred and seventy-four, that the judgment by default entered on the 12th day of May, eighteen hundred and sixty-six, against said defendant be now confirmed and made final, and accordingly that plaintiff, Logan Hunton, do have judgment against defendants Mason Pilcher and Ferdinand M. Goodrich in solido, and as members of the late commercial firm of Pilcher & Goodrich, for the sum of twenty-five hundred dollars, with interest thereon at the rate of eight per cent. per annum from the 1st day of May, 1861, until paid, and costs of suit, and the said judgment was signed on the 23d day of January, in the year eighteen hundred and seventy-four.

Defendant, further answering, denies that said judgment is null and void as alleged by plaintiff, but that the same is a valid judgment rendered after due process of law, according to law, and upon a good and valid cause of action.

Defendant denies that at the time of the service of the citation
51 and petition aforesaid that the said Goodrich was a resident of the parish of Carroll, or that he was then and there domiciliated, but respondent says that he believes, and has been so informed by credible persons, that the said Goodrich was at the time residing and was domiciliated in the city of New Orleans.

That the said Pilcher was on the eleventh day of April, in the year eighteen hundred and sixty-one, residing and domiciliated in the city of New Orleans, and also that the said firm Pilcher and Goodrich was then and there located and domiciliated and not elsewhere; that if the

said firm ever was dissolved, of which defendant has no knowledge, remembrance, information, and belief, this defendant says that the said firm has always been located and domiciliated in the city of New Orleans, and if the said firm ever was dissolved, then defendant avers that the liquidation of the said firm could not have been in any other place or city than the city of New Orleans, and defendant verily believes, and such is his knowledge, remembrance, information, and belief, that the said firm has never been domiciliated elsewhere than in the said
52 city of New Orleans; and defendant further affirms that he was never notified or ever had any knowledge that the said firm was dissolved at or before the rendition of said judgment hereinbefore referred to, and he says that if the said firm was then dissolved, defendant believes and is credibly informed that the said firm was at the time in a course of liquidation, which liquidation had not ceased at the time aforesaid.

Defendant says that he has no knowledge, remembrance, information, & belief that the said firm Pilcher and Goodrich had been dissolved before the 12th day of April, A. D. 1866, and that legal notice was given thereof by publication in several papers published in the city of New Orleans, where said firm was domiciled, otherwise than such publication or notices that may have been given under and by virtue of the bankrupt act, which, however, never came to the knowledge of this defendant, but that at the time of the confirmation of the said judgment, as hereinbefore stated, defendant had heard that the said Ferdinand M. Goodrich had obtained a discharge in bankruptcy, but this defend-
53 ant has never seen this judgment of discharge in bankruptcy, and has no personal knowledge of it, and therefore calls on the complainant to produce proof of the same.

Defendant specially avers that the said alleged discharge cannot now be set up and plead against him, because the same might have been pleaded as a defence in the aforesaid action at law; that the said firm and the said Goodrich had no defense upon the merits, and even if they had such a defense as they allege, that it has been lost to them, being attributable to their own omission, neglect, and default.

And the defendant avers that all the matters now urged and set up in the said bill for an injunction against said judgment at law were properly cognizable by and might have been pleaded in said fourth district court of New Orleans in the said suit at law, and with respect to which the said plaintiff is not entitled to any relief in a court of equity; and this defendant hopes that he shall have the same benefit of this defence as if he had demurred to the said plaintiff's bill; and this defendant denies that there is any other matter or thing in said bill con-
54 tained, material or necessary for this defendant to answer, and not herein sufficiently answered, traversed, and avoided or decreed, is true to the knowledge or belief of this defendant.

All of which this defendant is ready to maintain and prove as this court will direct, and prays to be hence dismissed with his costs.

(Signed) J. AD. ROZIER &
(") THO'S HUNTON,
Solicitors.

Logan Hunton, being duly sworn, deposes and says that he is the defendant named in the foregoing answer subscribed by him; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on

information and belief, and as to those matters he verily believes it to be true.

(Signed) LOGAN HUNTON.

Subscribed & sworn to before me this 19th day of November, A. D. 1875.

[SEAL.] (Signed) A. P. SAUGRAM,
Notary Public, S't Louis Co., Missouri.

55 *Entry in chancery order-book.—Nov'r 22d, 1875.*

F. M. GOODRICH } *vs.* } No. 7168.
LOGAN HUNTON. }

The defendant herein has this day filed his answer to the complainant's bill of complaint.

Entry at December rules. Appearance.—December 6th, 1875.

F. M. GOODRICH } *vs.* } No. 7168.
LOGAN HUNTON. }

The defendant herein, by his solicitors, Tho's Hunton and J. Ad. Rozier, has this day entered his appearance to complainant's bill.

Motion and order. Case fixed.—Extract from the minutes, Jan'ry 10, 1876.

F. M. GOODRICH } *vs.* } No. 7168.
LOGAN HUNTON. }

On motion of Geo. L. Bright, attorney for the plaintiff, ordered that his cause be set for trial on 26th instant at 11 a. m., and that defendtnt be notified.

a

Motion and order. Case fixed by consent.—Extract from the minutes, January 29th, 1876.

56 F. M. GOODRICH } *vs.* } No. 7168.
LOGAN HUNTON. }

By consent of counsel the cause is fixed for trial on the 7th February, 1876, at 11 a. m.

Hearing and submission.—Extract from the minutes, February 7th, 1876.

F. M. GOODRICH } *vs.* } No. 7168.
LOGAN HUNTON. }

This cause came up for trial.

G. L. Bright for complainant, J. Ad. Rozier and Tho's Hunton for defendant.

And after hearing the pleadings, evidence, and arguments, the court took time to advise.

Transcript 4th district court. Logan Hunton vs. Pilcher & Goodrich.—Offered by pl'ff & def't, February 7th, 1876.

U. S. circuit court.

F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 7168.

STATE OF LOUISIANA:

4th district court of New Orleans.

LOGAN HUNTON
vs.
PILCHER & GOODRICH. } No. 17063.

Petition and note.—Filed April 10th, 1866.

57 To the honorable Paul C. Theard, judge of the 4th district court of New Orleans:

The petition of Logan Hunton, who resides in the city of S't Louis and State of Missouri, respectfully shows:

That Pilcher & Goodrich, a commercial firm doing a commercial business in the city of New Orleans, and composed of Mason Pilcher & Ferdinand M. Goodrich, who resides in the city of New Orleans, are justly and truly indebted in solido unto your petitioner in the full sum of twenty-five hundred dollars, and interest at the rate of eight per cent. per annum thereon from the first day of May, in the year eighteen hundred and sixty-one, until paid, for this, to wit: that petitioner is holder and owner of a certain promissory note, for the sum of twenty-five hundred dollars, drawn by said Pilcher & Goodrich to the order of and endorsed by themselves, dated at New Orleans on the twenty-sixth day of January, A. D. 1861, and payable on the 1st day of May, A. D. 1861, which said note, on the first day of May, 1861, at maturity, was duly presented for payment, but still remains unpaid, all of which will more fully appear by reference to the said note.

58 Petitioner further alleges that the *the* said Pilcher & Goodrich, although thereunto amicably requested, refuse to pay the amount for which they are indebted as aforesaid.

Petitioner therefore prays that said Mason Pilcher & Ferdinand M. Goodrich, who compose the firm of Pilcher & Goodrich, be cited to appear and answer this petition, and that after due proceedings they be condemned in solido to pay to the petitioner the aforesaid sum of twenty-five hundred dollars [U. S. internal-revenue stamp] and costs of suit, with interest as aforesaid, from the date aforesaid; and petitioner asks for all general & equitable relief.

(Signed) J. AD. ROZIER,
Att'y for Pl't'ff.

Note.—Filed April 10th, 1866.

$2,500.] NEW ORLEANS, *January 26th,* 1861.

On the 1st of May, 1861, after date, we promise to pay to the order

of ourselves, at our office in New Orleans, twenty-five hundred $\frac{1}{100}$ dollars, for value received, with interest at the rate of eight per cent. per annum after maturity until paid.

(Signed) PILCHER & GOODRICH.

(Endorsed:) Pilcher & Goodrich.

59 *Citation.*

STATE OF LOUISIANA:

4th district court of New Orleans, in the city of New Orleans.

LOGAN HUNTON *vs.* PILCHER & GOODRICH. } No. 17,063.

M'r MASON PILCHER:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court of New Orleans, in ten days after the service hereof.

Witness the Hon. Paul E. Theard, judge of the said court, the 10th day of April, in the year of our Lord 1866.

[SEAL.] (Signed) J. T. DICK, *D'y Clerk.*

Citation.

STATE OF LOUISIANA:

4th district court of New Orleans, in the city of New Orleans.

LOGAN HUNTON *vs.* PILCHER & GOODRICH. } No. 17,063.

M'r FERDINAND M. GOODRICH:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver
60 your answer to the same in the office of the clerk of the fourth district court of New Orleans in ten days after the service hereof.

Witness the Hon. Paul E. Theard, judge of the said court, the 10th day of April, in the year of our Lord 1866.

[SEAL.] (Signed) J. T. DICK, *Deputy Clerk.*

Sheriff's return on citation.—Filed April 13th, 1866.

Fourth district court of New Orleans.

LOGAN HUNTON *vs.* PILCHER & GOODRICH. } No. 17063.

Copy of petition and citation inside to be served on Mason Pilcher. Received April 11th, 1866, and on the 12th of same month & year

served a copy of within citation & accompanying petition personally on Mason Pilcher, def't herein.

(Signed) W. WALSH, *D'y Sh'ff.*

Sheriff's return on citation.—Filed April 13th, 1866.

Fourth district court of New Orleans.

LOGAN HUNTON
vs.
PILCHER & GOODRICH. } No. 17063.

61 Copy of petition and citation inside to be served on Ferdinand M. Goodrich, p'lly.

Rec'd April 11th, 1866, and on the 12th of same month & year served a copy of within citation and accompanying petition personally on Ferdinand M. Goodrich, defendant herein.

Ret'd same day.

(Signed) M. WALSH,
D'y Sh'ff.

Default.—Entered May 12th, 1866.

4th district court of New Orleans.

LOGAN HUNTON
vs.
PILCHER & GOODRICH. } No. 17063.

Present, the Hon. Paul E. Theard, judge.

On motion of J. Ad. Rozier, of counsel for pl ff, and on suggesting to the court that defendants were duly cited on 12th ultimo, and have failed to answer, it is ordered that judgment by default be entered herein.

Extract from minutes of May 12, '66.

Testimony of Theo. Guyol.—Filed Jan'y 19th, 1874.

4th district court for the parish of Orleans.

LOGAN HUNTON
vs.
PILCHER & GOODRICH. } No. 17063.

Theo. Guyol, a witness on behalf of pl'ff, sworn, says that he
62 resides in this city; is a notary public, & has been acting as such in this city for the last thirty years; is acquainted with Mason Pilcher and Ferdinand M. Goodrich in this cause; they composed the firm of Pilcher & Goodrich; they were commission & cotton factors in this city, and did general commercial business; has often seen them write & sign their names as a firm. Is shown the note annexed to the petition & sued on; the signature thereto is genuine. In his notarial business he has protested thousands of dollars of the firm paper; he has been & is yet the notary of M'r M. Pilcher; that he has often passed act for the firm, which they signed in his office & in his presence. The firm did business in this city. The endorsement of Pilcher & Goodrich on the note is their true and genuine signature.

Note of evidence.—Filed Jan'y 19th, 1874.

4th district court, parish of Orleans.

LOGAN HUNTON
vs.
PILCHER & GOODRICH. } No. 17063.

Pl'ff introduces the note sued on and annexed to the petition in evidence.

63 *Judgment.*

4th district court for the parish of Orleans.

LOGAN HUNTON
vs.
PILCHER & GOODRICH. } No. 17063.

On motion of J. Ad. Rozier, esq., of counsel for plaintiff, and upon producing due proof of plaintiff's demand, and the law and the evidence being in his favor, it is ordered, adjudged, & decreed that the judgment by default herein entered on the 12th day of May, 1866, against defendants be now confirmed and made final; and, accordingly, that plaintiff Logan Hunton do have judgment against defendants, Mason Pilcher and Ferdinand M. Goodrich, in solido, and as members of the late commercial firm of Pilcher & Goodrich, for the sum of twenty-five hundred dollars, with interest thereon at the rate of 8% per annum from the 1st day of May, 1861, until paid, & costs of suit.

Judgment rendered January 19th, 1874.
Judgment signed January 23d, 1874.
(Signed) B. L. LYNCH, *Judge.*

Copy of judgment.

THE STATE OF LOUISIANA:

Fourth district court for the parish of Orleans.

64 I hereby certify that on the nineteenth day of January, 1874, judgment was rendered in this court in the following-entitled suit in the words and figures following, to wit:

LOGAN HUNTON
vs.
PILCHER & GOODRICH. } No. 17603.

On motion of J. Ad. Rozier, esq., of counsel for plaintiff, and upon producing due proof of plaintiff's demand, and the law & the evidence being in his favor, it is ordered, adjudged, & decreed that the judgment by default herein entered on the 12th day of May, 1866, against defendants be now confirmed and made final; and, accordingly, that plaintiff, Logan Hunton, do have judgment against defendants, Mason Pilcher and Ferdinand M. Goodrich, in solido, and as members of the late commercial firm of Pilcher & Goodrich, for the sum of twenty-five hundred dol-

lars, with interest thereon at the rate of eight per cent. per annum from the 1st day of May, 1861, until paid, and costs of suit.

Judgment signed January 23d, 1874.

B. L. LYNCH, *Judge.*

. In testimony whereof I have hereunto set my hand and affixed
65 the seal of the said court, at the city of New Orleans, on this twenty-third day of January, in the year of our Lord one thousand eight hundred and seventy-four, and the 98th year of the Independence of the United States.

[SEAL.] (Signed) J. O. CHALON,
Deputy Clerk.

Sheriff's return on copy of judgment.—Filed 28th January, 1874.

Fourth district court.

LOGAN HUNTON
vs.
PILCHER & GOODRICH. } No 17063.

Copy of judgment to be served on Mason Pilcher & Ferdinand M. Goodrich.

Rec'd January 24, 1874, and on the twenty-sixth day of the same month and year served copy of the within judgment on Ferdinand M. Goodrich, one of the defendants herein, in person. Ret'd same day.

(Signed) R. LACOSTE,
D'y Sh'ff.

And on the 26th day of same month and year, served a copy of within judgment on Mason Pilcher, one of the defendants herein, by leaving same at his domicil, No. 109 Custom-house st., in the hands of Manuel Shephard, a person apparently over 14 years of age, being & re-
66 siding in said domicil, the defendant being absent from home at the time of said service, all of which facts I learned by interrogating said Manuel Shephard. Ret'd same day.

(Signed) HENRY BENIT,
D'y Sh'ff.

Certificate.

STATE OF LOUISIANA:

Fourth district court for the parish of Orleans.

I, Edward Dé Blois, clerk of the fourth district court for the parish of Orleans, do hereby certify that the above and foregoing ten pages do contain a true, full, correct, and complete transcript of all the proceedings had, of all the documents filed, and of all the testimony and evidence adduced in the trial of the cause wherein Logan Hunton is plaintiff and Pilcher & Goodrich are defendants, which suit was instituted in the fourth district court for the parish of Orleans, under the No. 17063 of the docket thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this twenty-
67 eighth day of May, in the year of our Lord one thousand eight

hundred and seventy-five, and in the 99th year of the Independence of the United States of America.

[SEAL.] (Signed) ED. DE BLOIS, *Clerk.*

Testimony taken by consent and offered in evidence & filed Feb'y 7th, 1876.

U. S. circuit court.

F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 7168.

MASON PILCHER, sworn for pl'ff, says:

The pl'ff, Goodrich, married my daughter in 1853; at that time he resided in Lake Providence, Carroll Parish. He was practicing law there. He remained there and lived there ever since, except in 1872, when he rented a house in New Orleans for 10 mo's. When he lived in Lake Providence he kept house there with his family. The house belonged to him. He had not elsewhere in the year 1866 a dwelling or residence.

The firm of Pilcher & Goodrich was dissolved in 1863 or 1864. It was not in existence in 1865 or 1866. Has not been since in existence.

68 Cross-examined:

After the dissolution of the firm of Pilcher & Goodrich, the books, papers, and a portion of the assets of the firm remained in my hands and under my charge in the city of New Orleans. I continued attending to the business of the firm until I went into bankruptcy. I was the only partner who remained in the city, and I continued in possession of the books and papers of the firm. I think it was in 1868 that I went into bankruptcy; up to that time I had all the books & papers here in the city of New Orleans, and attended to whatever was to be done. Nearly all the debts due us were in the country. M'r Goodrich attended to the matters in the country; I attended to the business matters in the city of New Orleans.

(Signed) MASON PILCHER.

Sworn to and subscribed before me this 15th day of July, 1874.

(Signed) W. T. EVANS,
Second Justice Peace for the Parish of Orleans, L'a.

69 United States circuit court, dist. of Louisiana.

F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 7168.

FERDINAND M. GOODRICH, duly sworn, deposes & says:

I am the plaintiff in this suit. On the 12th day of April, A. D. 1866, I was a resident of the parish of Carroll, in this State, and there was my domicil. I have resided and been domiciled in said parish ever since the year 1842, and without doubt up to the year 1871.

I am an attorney & counsellor at law, though not practicing at the present time; commenced the practice of my profession at the town of Providence in the parish of Carroll aforesaid in the year 1849; was pursuing my said avocation in the parish of Carroll during a part of the year 1865, and the whole of the year 1866, and the years following until 1871. From the year 1853 and up to the year 1871 I owned, and resided therein, a dwelling house in the town of Providence, with my family.

I always voted in the parish of Carroll; I never voted elsewhere.

70 I had not from the year 1849, and especially during the year 1866 and up to the year 1872, any establishment, home, residence, or domicil in the parish of Orleans. My establishment, home, residence, and domicil during that time was in the parish of Carroll aforesaid.

The firm of Pilcher and Goodrich, of which I was a member, was dissolved, and due notice thereof given, in the year 1863 or 1864; it had no existence during the year 1866.

I now annex a copy of an advertisement published in the Picayune newspaper July 30th, 1865:

Copy of advertisement published in the Picayune newspaper July 30th, 1865.

Pilcher & Barrow, successors to Pilcher & Goodrich & M. Pilcher & Co., cotton & sugar factors and commission merchants, No. 36 Factors' Row, Perdido street, New Orleans.
J'y 30-3m

Cross-examined:

In 1866 I did not spend any time in New Orleans, except one or two visits during that year. I had no dwelling house here, but I owned a dwelling house here which I purchased in 1859, but in the year 1866
71 I did not occupy it, nor did I ever occupy it; it was occupied by M'r Mason Pilcher. I did not bring my family down in 1866 to occupy it.

I rented a house here in 1872, in the month of November of that year, for ten months; I occupied it with my family during that time until September, 1873.

The dissolution of the firm took place in 1863 or 1864. No one was appointed liquidator; M'r Pilcher had special charge of the books, and I suppose as far as there was a liquidation he attended to it.

M'r Pilcher resides in New Orleans, and has resided here since in 1859. I was not here when the firm of Pilcher & Goodrich was dissolved. M'r Pilcher has remained in New Orleans since 1859. The assets of the firm, at the dissolution, remained in M'r Pilcher's charge.

I attended to the liquidation of some matters in the country; M'r Pilcher attended to whatever was to be attended to in the city.

The business of Pilcher & Goodrich was done in the city of New Orleans, and was located in this city.

72 The business of the firm was wound up by our going into bankruptcy. I think this was in 1868. Up to this time M'r Pilcher was in possession of the books, & whatever was to be attended to in the business of Pilcher & Goodrich was attended to by M'r Pilcher, who had all the books and papers of the firm until we went into bankruptcy.

(Signed) FERD. M. GOODRICH.

Sworn to and subscribed before me this 15th day of July, 1874.
[SEAL.] (Signed) W. T. EVANS,
Second Justice Peace for the Parish of Orleans, La.

The foregoing testimony of Mason Pilcher and Ferd. M. Goodrich taken by consent, subject to all legal exceptions save as to the manner and form of taking same.

New Orleans, July 17th, 1874.

(Signed) J. AD. ROZIER,
Att'y for Logan Hunton.

(Signed) GEO. L. BRIGHT,
For Pl'ff.

Advertisement in the New Orleans Picayune newspaper of date July 19th, 1865. Offered by plaintiff & filed February 7th, 1876.

73 F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 7168.

DISSOLUTION.

The copartnership of Pilcher & Goodrich was dissolved on the 1st of June last; each partner is fully authorized to liquidate the business and use the name of the firm.

We solicit for our successors, Mess'rs Pilcher & Barrow, a continuance of the business of our old customers.

M. PILCHER.
F. M. GOODRICH.

The business of M. Pilcher & Co. is discontinued from this date.

M. PILCHER.

NEW ORLEANS, *July 15th*, 1865.

Pilcher & Barrow, successors to Pilcher & Goodrich and M. Pilcher & Co., cotton and sugar factors and commission merchants, 36 Perdido street, beg leave to tender our services to the old friends of the houses we have succeeded, as well as to our own friends, promising strict attention to all business confided to us.

M'r M. Pilcher is our authorized agent, and has full powers to use our name, and will conduct the business for us.

74

C. M. PILCHER.
D. N. BARROW.

NEW ORLEANS, *July 15th*, 1865.

J'y 18-3t.

Certificate of discharge in bankruptcy in the matter of Pilcher & Goodrich, individually & as copartners.—Offered in by pl'ff & filed February 7th, 1876.

F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 7168.

United States district court, district of Louisiana.

No. 280. In bankruptcy.

Present, the honorable E. H. Durell; December 17th, 1868.

Whereas Ferdinand M. Goodrich, individually and as a member firm Pilcher & Goodrich, has been adjudged a bankrupt under the act of Congress establishing a uniform system of bankruptcy throughout the United States, approved March 2, 1867: and whereas it appears that the said petitioner has conformed to all the requirements of law in that behalf: It is therefore ordered and decreed by the court that said Ferdinand M. Goodrich be, and he is hereby, forever discharged from all debts and claims which by said act are made provable against his estate and which existed on the 28th day of Febr'y, 1868, on which day

75 the petition for adjudication was filed, excepting such debts, if any, as are by said act excepted from the operation of a discharge in bankruptcy.

(Signed) E. H. DURELL, *Judge.*

Given under my hand and the seal of our court at New Orleans, this seventeenth day of December, 1868.

[SEAL.] K. LOEW,
D'y Clerk.

Decree, injunction dissolved and bill dismissed.—Extract from the minutes, February 14th, 1876.

F. M. GOODRICH
vs. } 7168.
LOGAN HUNTON.

This cause came on to be heard upon the bill, answer, replication, and proofs, and was argued by counsel.

On consideration whereof, it is ordered, adjudged, & decreed that the injunction herein issued by the State court was wrongfully obtained, and is therefore dissolved.

And it is further ordered and decreed that plaintiff's bill be dismissed at his costs.

Rule for a new trial.—Entered and filed February 17th, 1876.

United States circuit court, district of Louisiana. In equity.

76 F. M. GOODRICH
vs. } No. 7168.
LOGAN HUNTON.

On motion of George L. Bright and David N. Barrow, solicitors for the complainant, it is ordered that the defendant show cause, on Saturday, the 26th day of February, 1876, at 11 a. m., why a new trial should not be granted, on the ground that the judgment herein rendered is contrary to the law and the evidence.

Marshal's return on rule.

Received February 19th, 1876, by the U. S. marshal, and on the 21st of Feb'y served a copy hereof on J. Ad. Rozier in person.

(Signed) S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y Marshal.

Order, new trial refused.—Extract from the minutes, February 26, 1876

F. M. GOODRICH
vs. } 7168.
LOGAN HUNTON.

The rule for a new trial in this cause was called up.

77 Geo. L. Bright for mover Tho's Hunton for defendant.

And after hearing argument, it is ordered that the rule be dismissed and a new trial refused, with costs.

Decree engrossed.—Judgment book.—February 28th, 1876.

Circuit court of the United States, fifth circuit and district of Louisiana, November term, 1875.

NEW ORLEANS, *Monday, February 14th*, 1876.

Court met pursuant to adjournment.
Present, W'm B. Woods, circuit judge.

F. M. GOODRICH } *vs.* LOGAN HUNTON. } No. 7168.

This cause came on to be heard upon the bill, answer, replication, and proofs, and was argued by counsel; on consideration whereof it is ordered, adjudged, and decreed that the injunction herein issued by the State court was wrongfully obtained, and is therefore dissolved.

And it is further ordered and decreed that plaintiff's bill be dismissed at his costs.

Decree rendered February 14th, 1876.
Decree signed February 28th, 1876.

(Signed) W. B. WOODS,
Judge.

78 *Petition and order for appeal.—Filed March 7th*, 1876.

U. S. circuit court, in equity.

F. M. GOODRICH } *vs.* LOGAN HUNTON. } No. 7168.

To the honorable the circuit court of the United States for the 5th circuit & district of Louisiana:

The petition of F. M. Goodrich, the complainant, respectfully shows:

That he is aggrieved by the judgment rendered in the cause on the 14th February, 1876, and signed on the 28th February, 1876, and he desires to prosecute an appeal from the same.

Your petitioner prays that an appeal to operate as a supersedeas be allowed him from said judgment, returnable to the next term of the Supreme Court of the United States, on executing such bond as the court and the law may require, and for general relief.

(Signed) GEO. L. BRIGHT,
Solicitor for petitioner.

Order.

An appeal to operate as a supersedeas is allowed in this case as prayed for, and according to law, returnable to the Supreme Court of the United States on the second Monday of October, 1876, the petitioner giving bond in the sum of five hundred dollars, with good
79 and solvent security, conditioned as the law directs.

New Orleans, March 7th, 1876.

(Signed) W. B. WOODS,
Judge.

Bond for appeal.—Filed March 7th, 1876, and recorded B. 4, fo. 80.

F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 7168.

UNITED STATES OF AMERICA:

Know all men by these presents that we, F. M. Goodrich, as principal, and Edward A. Palfrey, as surety, are held and firmly bound, jointly and severally, unto Logan Hunter, in the sum of five hundred ($500) dollars, lawful money of the United States of America, to be paid to the said Logan Hunter, heirs, executors, administrators, and assigns, for which payment well and truly to be made we bind ourselves and each of us, by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the 6th day of March, in the year of our Lord eighteen hundred and seventy-six.

Whereas F. M. Goodrich has this day presented a petition to
80 the honorable the *the* circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, praying for a suspensive appeal, to act as a supersedeas, from the judgment rendered on the 14th day of February, 1876, and signed on the 28th day of February, 1876, in the suit of F. M. Goodrich vs. Logan Hunton, No. 7168.

Now, the condition of the above obligation is that we, the above-bounden F. M. Goodrich and Ed. A. Palfrey, will well and truly pay to the said Logan Hunton, the defendant in said appeal, all such damages as he may recover against us in case it should be decided that the said appeal was wrongfully obtained.

(Signed) FERD. M. GOODRICH. [L. S.]
(") ED. A. PALFREY. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) F. B. VINOT.
(") R. B. HOLLY.

Approved.
(Signed) W. B. WOODS,
Judge.

DISTRICT OF LOUISIANA, *ss:*

Edward A. Palfrey, surety on the within bond, being duly sworn, says that he resides in the city of New Orleans, Louisiana; that he is worth the sum of five hundred dollars over and above his debts and liabilities and property exempt from execution.

(Signed) ED. A. PALFREY.

81 Subscribed and sworn before me this 7th day of March, 1876.
(Signed) F. B. VINOT,
Comm'r of U. S. Circuit Court.

Rule to dismiss appeal.—Entered and filed March 27th, 1876.

U. S. circuit court.

F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 7168.

On motion of J. Ad. Rozier and Tho's Hunton, attorneys for defendant, it is ordered that the plaintiff show cause, on the 1st day of April, 1876, at 11 a. m., why the order granted herein on the 7th day of March, 1876, allowing an appeal to the Supreme Court of the United States to operate as a supersedeas or suspensive appeal, on giving a bond in the sum of $500.00, should not be set aside and vacated, and the appeal, as a suspensive appeal, be dismissed—

Because the bond is insufficient in amount to authorize a supersedeas.

And because the court erred in allowing a supersedeas or suspensive appeal on a bond for $500.

And because the name of the proposed surety was not given to defendant before the bond was signed and filed.

82 *Marshal's return on rule to dismiss appeal.*

Received March 28th, 1876, by the U. S. marshal, and on the 28th day of March, 1876, served a copy hereof on Geo. L. Bright, by handing the same to Ed. Donohue, his clerk, at his office in this city.

(Signed) S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y Marshal.

Motion and order. Rule to dismiss appeal fixed.—Entered and filed May 16th, 1876.

U. S. circuit court.

F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 7168.

On motion of Geo. L. Bright, att'y for plaintiff, it is ordered that the rule herein taken by the defendant on 27th March, 1876, be fixed for Saturday, 20th of May, 1876, at 11 a. m., and that the defendant be notified thereof.

Order.—Rule to dismiss appeal. Denied and appeal maintained.—Extract from the minutes, June 2d, 1876.

F. M. GOODRICH
vs.
LOGAN HUNTON. } No. 7168.

The rule to dismiss the appeal came on to be heard.

83 Thomas Hunton for plaintiff in rule; Geo. L. Bright for defendant in rule.

And after hearing argument, it is ordered that said rule be discharged and that the appeal be maintained.

84 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit, and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 83 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Ferdinand M. Goodrich versus Logan Hunton, No. 7168 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 31st day of July, A. D. 1876.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, William B. Woods, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 31st day of July, A. D. 1876.

W. B. WOODS, *Judge.*

85 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Logan Hunton, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a petition & order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Ferdinand M. Goodrich is plaintiff and appellant, and you are defendant and appellee, to show cause, if any there be, why the judgment rendered against the said Ferdinand M. Goodrich, as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 7th day of March, in the year of our Lord one thousand eight hundred and seventy-six.

W. B. WOODS,
Judge.

86 (Indorsed:) United States circuit court. No. 7168. Ferdinand M. Goodrich vs. Logan Hunton. Citation.

Marshal's return.

Received Mar. 8, 1876, by the U. S. marshal, and on the 24th day of June, 1876, served a copy hereof on Logan Hunton, by handing the same to J. Ad. Rozier, his attorney, in person in this city.

S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y Marshal.

On this 6th day of July, 1876, personally appeared before me, the subscriber, S. W. Reed, and makes oath that he served a copy of the within citation as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Subscribed and sworn to before me this 6th day of July, 1876.

F. B. VINOT,
U. S. Comm'r.

(Indorsement on cover:) No. 201. Ferdinand M. Goodrich, appellant, vs. Logan Hunton. Louisiana, C C. U. S. Filed 9th October, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 201.

FERDINAND M. GOODRICH,
DAVID N. BARROW, ADMINISTRATOR, APPELLANT,
vs.
LOGAN HUNTON, APPELLEE.

Brief for the Complainant and Appellant.

STATEMENT.

The defendant, Logan Hunton, on the 10th April, 1866, instituted suit against Mason Pilcher and Ferdinand M. Goodrich in the Fourth District Court of New Orleans.

Personal service of petition and citation was made on Mason Pilcher on 12th April, 1866, and on Goodrich on 11th April, 1866. Print, p. 25, 26, 27.

Neither Pilcher nor Goodrich made any appearance. Goodrich received a discharge in bankruptcy, and thought he was thereby protected from all suits.

On the 19th January, 1874, the plaintiff, Hunton, took a judgment against Mason Pilcher and Ferdinand M. Goodrich by confirmation of the default. Print, p. 28.

This suit was instituted by Ferdinand M. Goodrich against Logan Hunton, to enjoin the execution of his judgment, and to cancel and annul the judgment, on the grounds:

1st. Because, at the time the petition and citation were served on him (12th April, 1866), he, Goodrich, was a resident of the parish of Carroll, State of Louisiana, and the Fourth District Court of New Orleans, that rendered the judgment, was without jurisdiction, *ratione personæ*.

2d. Because he was forever discharged by the discharge in bankruptcy.

This suit was instituted in the Fourth District Court of New Orleans—the Court that rendered the judgment.

The defendant, Hunton, prayed that it be removed to the Circuit Court of the United States, for the Fifth Circuit and District of Louisiana, on the ground, that the plaintiff is a citizen of Louisiana, and he a citizen of Missouri. The removal was ordered by the State Court, and the proceedings removed to the United States Court.

The plaintiff excepted to the jurisdiction of the United States Court; the exception was dismissed, and final judgment was rendered against the plaintiff. From this judgment the plaintiff appealed.

WE ASSIGN AS ERRORS:

1st. The transfer was illegally made, and the Circuit Court was without jurisdiction.

2d. It appears that the Fourth District Court that rendered the judgment against Ferdinand M. Goodrich, was without jurisdiction, and therefore the judgment is null and void.

I. *The Circuit Court has no jurisdiction to annul the judgment of a State Court, and cannot enjoin its judgment.*

The judgment in favor of Hunton was rendered by the State Court. The State Court has full control of it—could render it, refuse to render it—grant a new trial, and of necessity if rendered when it had no jurisdiction, can annul it. The question of its validity is always under control of the Court that rendered it. The Court could issue execution and of necessity control that execution.

Otherwise the validity of a State judgment could be reviewed without appeal or writ of error by the Court of the United States. And if a State Court refused to execute any of its judgments, the U. S. Court could execute it.

An injunction to arrest a judgment, and a suit of nullity, is incidental and auxiliary to the original action—a graft upon it, not an independent and separate litigation. The Court that

rendered the judgment, could without motion, take notice of the nullity of a judgment for want of jurisdiction and refuse to execute it.

2 Story on the Const: §1757 says: "It has accordingly been settled, that no State Court can issue an injunction upon any judgment in the Court of the United States: the latter having an exclusive authority over its own judgments and proceedings. Nor can any State Court, or any State legislature, annul the judgments of the Courts of the United States, or destroy the rights acquired under them."

§1759. On the other hand the national Courts have no authority (in cases not within the appellate jurisdiction of the United States) to issue injunctions to judgments in the State Courts; or in any other manner to interfere with their jurisdiction or proceedings.

See also 1 Kent's Com., Sec. 19. p. 451, 7th Ed.

In the case of the First National Bank at Alexandria vs. Turnbull & Co., 16 Wallace, p. 195, Turnbull & Co. claimed property which had been seized by a virtue of a *fieri facias* issued against Thomas, and the Conrt said: "The contest could not have arisen but for the judgment and execution, and the satisfaction of the former would at once have extinguished the controversy between the parties.

The proceedings were necessarily instituted in the Court where the judgment was rendered, and whence the execution issued. No other Court according to the statue, could have taken jurisdiction. * * * * * *

That it was only auxiliary and incidental to the original suit is, we think, too clear to require discussion. We refer to some of the leading authorities which bear upon the subject. Given vs. Breedlove, 2 How. 35; Freeman vs. Howe 24 Id. 460; Dunn vs. Clark, 8 Peters, 1; Williams vs. Bryne, Hempstead, 472."

In 23 An., La. Rep., p. 450, Brooks vs. Montgomery, the Court decided "the sale of property which has been seized by the Marshal of the United States, under a writ of fieri facais which has issued from the Circuit Court thereof, cannot be enjoined by a State Court, on the allegation of a third party that the property seized belongs to him, and is not that of the de-

fendant in the suit under which the fi. fa. issued. In all cases of this kind the Court which issued the original process by which the seizure was made, has the exclusive right to determine its jurisdiction in the case."

If the Court that issued the fi. fa. alone has the jurisdiction when a third person complains, for a greater reason it has exclusive jurisdiction when the defendant complains.

What is to be the consequence if the U. S. Court has jurisdiction? Suppose the State Court be of opinion that its judgment is a nullity for the want of jurisdiction, and refuses to execute the judgment?—The Court might be of that opinion and might act upon it without the suggestion of parties. Will the U. S. Court imprison the Judge of the State and compel him to execute the judgment?

Besides, no United States Court can grant an injunction to to stay proceedings in a State Court. *Act* 1793, 1 *Statutes at Large, p.* 334, *Rev. St.* 136, §720. *Diggs vs. Walcott*, 4 *Cr.*, 179; *Peck vs. Jermes*, 7 *How.* 623; *Watson vs. Jones*, 13 *Wall.*, 719; *Dial et al. vs. Reynolds et al.*, 6 *Otto*, 340.

An action to annul a judgment must be brought before the same Court that rendered it. Stevenson vs. Weber, 29 La. An. 105.

From the order made by the State Court removing this cause to the United States Circuit Court, Goodrich appealed to the Supreme Court of Louisiana and that Court decided that the order of removal was improperly granted; that the proceeding was one of which the Circuit Court could not take jurisdiction, and it avoided and annulled the order of transfer. Goodrich vs. Hunton, 29 La. Annual Rep. 372.

In Ranlett vs. The Collier White Lead Company, 30 *La. An.*, *p.* 56, the Court said: "The action to annul a judgment is a pendant to the original suit, and a consequence of it. In that, the Collier Company sought the jurisdiction of the State Court, and obtained its judgment therein. It was plaintiff, and waiving its right to proceed in the courts of the United States, commenced its action in the courts of the State, where its debtors reside.

When those debtors, or either of them, attack the judgment

rendered against them, in the tribunal that rendered it, and seek to annul it, the original plaintiff has not the right to decline the jurisdiction selected by himself, and compel his debtor to go on with him into another forum, to test the validity of the judgment obtained by him. The lower court thus ruled and we approve it."

II. *The judgment rendered by the Fourth District Court of New Orleans in favor of Hunton and against Goodrich is null and void for want of jurisdiction.*

This Court will follow the decision of State Courts, in the construction of the Statutes of the State. *Townsend vs. Todd, et al.*, 1 *Otto, p.* 453; *Allen vs. Massey*, 17 *Wall.*, 354; *Swift vs. Tyson*, 16 *Peters*, 1; *Chicago City vs. Robbins*, 2 *Black*, 428; *Mackie vs. Story*, 5 *Otto, p.* 592.

Goodrich resided, when he was cited to answer the petition of Hunton, in the Parish of Carroll The suit was instituted in the parish of Orleans.

Art. 162 of the Code of Practice of Louisiana, provides:

"It is a general rule in civil matters, that one must be sued before his own judge, that is to say, before the judge having jurisdiction over the place, where he has his domicile or residence, and shall not be permitted to elect any other domicile or residence, for the purpose of being sued, but this rule is subject to those exceptions expressly provided by law."

Art., Code of Practice, 165, says: "There are other exceptions to this rule which require that the defendant be sued before the judge having jurisdiction over the place of domicile or residence; they are here enumerated:

* * * * *

2. "In matters relative to partnership as long as the partnership continues. In all suits concerning it, the parties must be cited to appear before the tribunal of the place where it is established, or if there are several establishments before that of the place where the obligation was entered into."

The Supreme Court of Louisiana has decided that a judgment rendered against a party cited to answer before a court, not of the parish in which he resided, is a nullity for want of jurisdiction, and although the party cited made no objecton or appearance.

In the case of the *State of Louisiana, ex rel., etc., vs. The Judge of the Eleventh District of Louisiana*, 21 An. La. p. 258, HOWELL, J., says: "The defendent is a resident of the parish of Claiborne, and by consent the suit was instituted and tried in the parish of Caddo, which we consider prohibited by article 162 C. P., as amended by Act approved 19th March, 1861, which declares that no one shall be permitted to elect any other domicile or residence than his own, for the purpose of being sued, except where expressly provided by law. There is no law making this case an exception." The judgment appealed from was reversed and the action dismissed.

In the case of *The State, etc., vs. Head*, 21 La. An., p. 551, the Court said: "These proceedings were not only totally without authority in law, but are in evasion of the one hundred and sixty-second article of the C. P., as amended by the Act of March 19th, 1861, and construed by this Court in the case of the State vs. Judge of the Eleventh District, 21 An., p. 258. We there held that no one is permitted to consent to be sued elsewhere than in the perish of his domicile or residence, except in cases expressly provided for by law, and this case is not within such exception.

Richardson vs. Hunter, 23 La. An., p. 255, was an action to annul a judgment rendered against the plaintiff in favor of the defendant. Richardson was sued as a resident of the parish of Rapides, and citation was served on him in the parish of Sabine, by a deputy sheriff of the parish of Rapides. The Court said: (p. 257) "The plaintiff and defendant resided and had their domiciles in different parishes. The Court was without jurisdiction, *ratione personæ*, and the parties could not, by consent, confer jurisdiction.

In *Alter vs Pickett*, 24 La. An., p. 515, the Court said: "The judgment against Mrs. Pickett is an absolute nullity, because it was obtained against her in the parish of Orleans, while her domicile was in the parish of Bossier."

But it will be argued that Goodrich was a member of the firm of Pilcher & Goodrich, and although the firm was dissolved when Goodrich was cited, it continued for the purpose

of liquidation, and therefore the individual members could be sued in the parish where the firm had had its domicile, although the individual members resided in other parishes.

This view was sustained by the learned Judge of the Circuit Court. We respectfully submit, he erred.

The evidence shows that Goodrich was cited on the 11th of April, 1866 (Print, p. 27), that the firm of Pilcher & Goodrich was dissolved in 1863 or 1864. Print, pp, 30, 31. Notice of the dissolution was given by newspaper publication,—p. 32.

Judge Woods of the Circuit Court who decided this cause says: "The evidence in this case establishes beyond controversy that the partnership of Pilcher & Goodrich, was in the course of liquidation when the suit of Hunton was brought in the Fourth District Court for the parish of Orleans; and the authorities are clear, that while the partnership is in liquidation, it continues, and the case must therefor fall within the exception to Art. 162."

We say the authorities are clear and reason makes it clear, that when a partnership is dissolved and in liquidation, it only continues for the purpose of liquidation. If it continued as Judge Woods says, it could only continue as a partnership, the partnership might be sued but it would not continue as to the individual members. The individual members could not be sued out of the place of their residences, even if the partnership could be sued at the place of its domicile. Speaking of the rights of partners after dissolution this Court in *Hall et al. vs. Lanning et al.*, 1 Otto, p. 165, says: "But in our view, appearance to a suit is a very different thing from those ordinary acts which appertain to a general settlement of business, such as receipt and payment of money, giving acquittances and the like. If a suit be brought against all the partners, and only one of them be served with process, he may undoubtedly, in his own defence, show, if he can, that the firm is not liable and to this end defend the suit. But to hold that the other partners, or persons charged as such, who have not been served with process, will be bound by the judgment in such a case, which conclude them as well on the question whether they were partners or not when the debt was incurred, as on that of the validity of

the debt, would it seems to us, be carrying the power of a partner after a dissolution of the partnership, to an unnecessary and unreasonable extent."

The learned Judge of the Circuit Court says, 2 Woods, p. 140. "Art. 165 was taken *verbatim* from Art. 159 of the French Code of procedure and the French authorities, in construing that article, have declared that notwithstanding dissolution, the partnership still continues for the purpose of liquidation and partition, and all the partners could be legally cited, to appear before the tribunal of the domicile of the firm for the above purpose. 2 *Troplong de la Société*, 472; *No.* 1004; 11 *Répertoire du Journal du Palais*, *verbo Société*, 827; *Cour d'Appel de Liége*, 1842, *p.* 321. The Supreme Court of Louisiana, following the French authorities, has held that the partnership, although dissolved, still continues for the purposes of liquidation and partition of gains and that the partners might be sued at the domicile of the partnership for such purposes. *Lobdell vs. Bushnell*, 24 La. An., 296."

The Art. 165 says, "as long as the partnership continues." It does not say a partnership continues after its dissolution—dissolution means it ceases to exists, except for the purpose of liquidation—for that purpose the consent of the partners is necessary—the Judge would have it, the partners may be sued out of there domiciles if there remains an asset uncollected, a disputed claim unpaid. After the dissolution, admitting the partnership can be sued, which is denied, the article does not say the individual partners can be sued out of their domiciles. Such is not the law. *Hall, et al, vs. Lanning, et al.*, 1 Otto, p. 166.

The authorities quoted by the learned Judge do not maintain his view. We respectfully submit the learned Judge erred. Admitting the partnership continues for the purpose of liquidation and partition, it does not therefore continue for a suit to be instituted against the individual members, by any pretended creditor—such a suit is not necessary for the liquidation and partition of the partnership. The language means that any partner may sue all the other partners in the Court of the domicile of the firm, for a liquidation and settlement of

the partnership. This is necessarily so, for in such a suit all the partners must be made parties. The learned Judge quotes *Lobdell vs. Bushnell*, 24 *La. An.*, 296. This was a suit by one partner against his three partners residing in different parishes. The suit was brought in New Orleans where one partner resided and where the principal business of the firm was carried on. It was for the settlement of the partnership. The Court first decided that Colwell, who resided in the parish of West Baton Rouge, could not be sued in New Orleans, and dismissed the suit. A rehearing was granted, and Ludeling, C. J., says: "The partnership although dissolved, still continues for the purposes of liquidation, and a partition of the gains. And we think the partners may be sued at the domicile of the partnership for such purposes. *Troplong de la Société*, 2, *p.* 472. *Repertoire du Journal du Palais, verbo* Société," etc. These are the authorities quoted by the Circuit Judge. We respectfully submit that these authorities are in direct opposition to the opinion of the Judge.

The question on an exactly similar state of facts was presented to the Supreme Court of Louisiana in the case of *Ranlett vs. The Collier White Lead Company*, 30 *La. An., p.* 56-61, (the volume is not yet bound, the decision is in a pamphlet, we will leave it with the clerk of this Court.) It was argued by the same counsel, Mr. J. Ad. Rozier, that argued for Mr. Hunton in the Circuit Court.

Ranlett sued the Collier White Lead Company to annul a judgment obtained in one of the District Courts of this city (New Orleans), by the Company, against the commercial firm of Dix & Ranlett, of which plaintiff, Ranlett, was a member. The partnership of Dix & Ranlett was dissolved in 1859 or 1860, and in 1861 Ranlett removed to the parish of Jefferson where he resided continuously, until 1865 or 1866. In January, 1864, suit was brought against him, as a member of the late firm of Dix & Ranlett, by the Collier White Lead and Oil Company, in one of the District Courts of the parish of Orleans, and judgment was taken against him by default, which was confirmed in June, 1864. He demanded the nullity of that judgment for want of jurisdiction.

The Court said (p. 58): "But the argument of counsel for appellee in this Court rests upon the hypothesis that the partnership continued in 1864, for the purpose of liquidation, although it was dissolved in 1859 or 1860, and that the partners were subject to the jurisdiction of the Court, of the place of the social domicile, without regard to their residence or domicile."

The Court said: "We think the decision in Lobdell vs. Bushnell, 24 An., relied on by counsel for appellee, has been misunderstood and misapplied." * * * * "The partners were not bound *in solido*, they were joint obligors, liable jointly to the complaining partner for his share of the gains; and all of them were necessary parties to the suit, as the Court well observed. *Ex necessitate*, the Court which acquired jurisdiction with respect to one of them, was vested with jurisdiction as to all of them, and it could not have proceeded to judgment without having them all made parties. * * * * * * P. 60.' Our attention has not been called to the decision of a court in the State of Louisiana, to the effect that after the dissolution of a partnership, the several partners who reside in parishes different from that, in which the partnership was established, may be sued for debts of the partnership, in the parish of the social domicile. Certainly, no such thing was decided in Lobdell vs. Bushnell, nor was any such question presented to the Court in that case.

When a partnership is dissolved that juridical being, that ideality no longer exists, and it cannot be said to continue in the individuals who composed it, or in the liquidators chosen by them, or in the receivers judicially appointed, in any other or different sense than a deceased natural person could be said to live in his heirs, or executors, or administrators. On the dissolution, the several partners become subject to the general laws, which were suspended with respect to them, so long as the partnership continued, in all suits concerning the partnership. All the partners in a commercial partnership are liable, *in solido*, for the debts of the partnership; and when the partnership is dissolved, that liability may be enforced against them singly and individually. See David vs.

Eloi, 4 La., 107; Lambert vs. Vauter, 6 Rob., 127. * * * *

In whatever sense, therefore, it can be said that a partnership continues for the purpose of liquidation, notwithstanding the dissolution, it is not true in the sense that they must be, or that they can be cited to appear before the tribunal of the social domicile, at the suit of creditors of the partnership, when they reside in other parishes. Obligors *in solido* are amenable each, to the jurisdiction of the tribunal of their respective domiciles; and as each may be sued alone for the entire demand, neither reason nor authority requires that they should be pursued in the tribunals of other parishes."

We respectfully submit, we have shown:

I. The transfer made by the State Court to the U. S. Circuit Court, was wrongfully made and the Circuit Court is without jurisdiction.

II. That the Fourth District Court of New Orleans had no jurisdiction *ratione personæ* over F. M. Goodrich, because he resided in the parish of Carroll, and not in the parish of Orleans.

We pray that the judgment of the Circuit Court be reversed.

GEO. L. BRIGHT,
DAVID N. BARROW, } SOLICITORS.

October, 1878.

Supreme Court of United States.

F. M. GOODRICH, APPELLANT,

versus

LOGAN HUNTON, APPELLEE,

Brief on behalf of Appellee.

Clark & Hofeline, Brief Printers, 112 Graveir Street.

Supreme Court of United States.

F. M. GOODRICH, APPELLANT,

versus

LOGAN HUNTON, APPELLEE,

Brief on behalf of Appellee.

Logan Hunton brought suit on the 10th of April, 1866, on a promissory note for $2500, made by Pilcher & Goodrich merchants of New Orleans, of which firm the appellant was a member. Both of the defendants were *personally* cited to answer. Service of citation was made on Goodrich on the 11th of April, 1866. Trans. p. 27.

The defendants having failed to answer within ten days as required by law, the plaintiff took judgment by default a month after service of citation.

The appellant Goodrich, might have set aside this default at any time by filing an answer, before the 28th of February, 1868, when he filed his petition in bankruptcy. Trans. p. 32. But it is presumed that he had no defence to make.

He received a discharge in bankruptcy on the 17th of December, 1868. He might then have pleaded his discharge, in the suit, no final judgment having yet been

rendered in the case. He wholly failed however to make any defence.

At length, on the 19th of January, 1874, the default was confirmed, and a final judgment rendered against him by the State Court, in which he had been sued, as a member of the late firm of Pilcher & Goodrich, p. 28.

Thereupon the said Goodrich brought his suit in the State Court to annul the said judgment and to enjoin Hunton from executing it. At the instance of Hunton, the defendant in the action of nullity, he being a citizen of Missouri, the action of nullity was removed to the U. S Circuit Court, and there placed on the equity side of the Court. Trans. p. 19.

The grounds on which the appellant prayed for a decree enjoining the said Hunton from executing the judgment, and also declaring it null and void, are set forth in the bill, pp. 19, 20.

On final hearing, the Circuit Court dissolved an injunction obtained by Goodrich and dismissed his bill—and Goodrich appealed.

The errors assigned in this Court are:

I. "That the transfer was illegally made, and the Court was without jurisdiction."

II. "That the Fourth District Court was without jurisdiction, in the suit of Hunton vs. Goodrich, and that the judgment against him is null and void.

On the first point: It is urged that the question of the legality or illegality of the transfer cannot be first raised in this Court. No motion to remand the case was made. The complainant did not object to the trial in the Circuit Court. He ought not to be allowed to have taken

his chances before that Court, and when the decision there was adverse to him, to asssign as error that the removal of the case was illegal.

The appellant seems to have considered that the Circuit Court was without jurisdiction of the cause, and therefore the order of removal was illegal.

The bill of complaint alleges p. 19, that the complainant, was a citizen of Louisiana, and the defendant, of Missouri. There was no want of jurisdiction therefore, *ratione personæ.*

But it is urged that "*the Circuit Court has no jurisdiction to annul the judgment of the State Court, and cannot enjoin its judgment,*" and this is urged in support of the first assignment of error.

It is perhaps a sufficient answer to this proposition to say: That "*the Circuit Court has neither annulled the judgment of the State Court, nor enjoined its judgment.*" Decree, p. 33. It is true that the appellant argued vehemently before the lower Court that it ought to annul the judgment of the State Court, and enjoin its execution, *as prayed for in his bill,* but the Court refused so to do.

All the authorities, therefore, which have been cited by counsel in support of the first assignment, if they have any application, must sustain the judgment of the Circuit Court which refused to annul the judgment of the State Court, and which refused to enjoin the State Court.

2d. The complainant and appellant is equally unfortunate in his second assignment of error, to-wit:

"*That the Fourth District Court that rendered the judg-*

ment against Ferdinand M. Goodrich, was without jurisdiction, and therefore the judgment is null and void."

This assigned error implies that the Circuit Court erred in not deciding according to the prayer of the bill, p. 20, that the judgment of the State Court against Goodrich, was null and void.

Again we say that the argument in appellant's brief, sustains the decision of the Circuit Court in refusing to annul the judgment of the State Court.

But the State Court was not without jurisdiction of the suit of Hunton vs. Pilcher & Goodrich, and the judgment was rightfully rendered against Goodrich.

The suit was brought in New Orleans, the domicil of the commercial partnership. Both partners were personally cited. The business of liquidation of the partnership affairs, after the dissolution, was conducted in New Orleans, p. 30, and both partners when cited at the domicil of the partnership, were amenable to the Courts having jurisdiction over that domicil.

Section 1204 of the Revised Statutes of Louisiana, it is argued, precluded a suit against Goodrich in New Orleans, his domicil being in Carroll Parish. This section corresponds with Art. 162, C. P.

There can be no doubt of the object of the Legislature in making that enactment.

The business relations between the merchants of New Orleans and the planters in the country is of a peculiar character. There is scarcely a cotton or sugar planter in the State that is not at one time or another, indebted to his factor or commission merchant for advances.

In consequence of this, it became customary several

years ago, that in making business arrangements, the factor would require the planter to *elect* New Orleans as his domicil, for the purpose of being sued if suit should be necessary, and to designate some one on whom citation might be served. This of course gave the factor a much more certain and speedy remedy, than if he were compelled to sue in the country. He could obtain judgment in the city and send his execution to the country.

It was not to the interest of country lawyers or country creditors that this practice should prevail, hence the law that the debtor "*should not elect for the purpose of being sued*," a domicil other than his actual residence. In this case, Goodrich did not elect a domicil.

But it has always been held that the plea of domicil in another parish must be made in *limine litis*—and that after issue joined by answer or default, the plea could not be maintained. Landry vs. Dickson, 7 An., 241.

The cases cited by appellant do not sustain his position that Goodrich could not be sued in New Orleans.

The question in Hall vs. Lanning, 1 Otto, was whether a resident partner, after dissolvtion, could enter appearance for an absent partner.

In Ranlett vs. White Lead Co., 30 An., 56, only one partner was cited after the dissolution, and judgment rendered against the other.

In the cases cited, p. 6 of appellant's brief, there was an *election* of domicil or consent to be sued elsewhere than at the domicil of defendant.

The second paragraph of Art. 165, Code of Practice, 1870, expressly gives the right to sue partners at the domicile of the partnership, while the partnership continues.

The French Code contains precisely the same provision, and the French Courts construe the article to mean, *that for the purposes of suit*, the partnership continues until its final liquidation.

Vol. II. 827, *Journal de Palais, virbo, societe.*

Troplong de la Societe, p. 450, No. 975:

Goodrich vs. Hunton, 2 Woods 137.

In this case, it was proved by the testimony of Pilcher, p. 30, that the partnership was in course of liquidation at the time suit was brought.

But this question cannot, we apprehend, be considered by this Court.

The State court, acting under the laws of the State, took jurisdiction of the case as against Goodrich, and rendered judgment, which is final.

This Court will hardly be induced to decide that the State court did not know its own jurisdiction. It will not, we are assured, be induced to declare the judgment of Hunton vs. Goodrich null and void—because, to do so, would be to decide directly in the teeth of the argument of appellant on pagos 2, 3 and 4 of his orief, as well as against the argument of the appellee.

It is insisted that this Court cannot, as the case is presented, look into the question ef removal. But if the question should be considered, the right to remove will be manifest.

The action of nullity is a suit in the strictest sense of the term. Art. 610 of the Code of Practice provides that "the party praying for the nullity of a judgment before the court which has rendered the same, *must bring*

his action by means of a petition, and the adverse party must be cited to appear *as in ordinary suits.*"

The suit of Hunton vs. Pilcher & Goodrich was No. 17,063, Fourth District Court.

The suit of Goodrich vs. Hunton, for nullity, was 42,804. P. 1 Trans.

They were independent suits. The injunction obtained by Goodrich, issued in the latter case. See bottom of p. 2. It was auxiliary to the latter, and not to the former suit.

The plea of bankruptcy seems to have been abandoned by the appellant, as it is not relied on in the brief.

Indeed, the plea could not avail after judgment, because it was not pleaded before. The *laches* of defendant will not be relieved by the Court.

3 An., 208.

10 An., 338.

1 John. Ch. 133.

50 N. Y., 593.

2 Carne's Cases, 102.

The bill in this case had no equity on its face. It does not deny the indebtedness—bui only seeks to annul and enjoin a judgment at law on technical grounds, each and all of which might have been pleaded to the action.

" A Court of equity will not enjoin the execution of a judgment at law, upon grounds which might have been pleaded to defeat the action at law."

Truly vs. Wanzer, 5 How. 141.

Creath vs. Sims, Id. 192.

Brown vs. Swawn, 10 Pit. 497.

Nor will a judgment be annulled on grounds which might have been pleaded in defence of the action.

As a part of the argument of defendant, the judgment of the State court in the action of nullity is appended.

It is respectfully asked that the decree of the Circuit Court be affirmed.

Durant & Howard.
for appellee.
2/18 '79.

Supreme Court of United States.

No. 201.

F. M. GOODRICH, Appellant,

versus

LOGAN HUNTON, Appellee.

Supplemental Brief for Appellee.

Since the original brief in this case was filed, the Supreme Court of Louisiana, has rendered a decision, overruling in express terms the former decisions of the Court, in 23 An. 255; 24 An. 515; 21 An. 258, 551, which were cited on behalf of appellant.

Thus the principal assignment of error is disposed of.

The decision recently rendered has not yet been reported, but a printed copy is appended.

The only remaining assignment refers to the removal of the cause to the United States Court. We have urged heretofore, that the appellant should have made a motion to remand, if the removal was objected to.

It is now suggested, that the jurisdiction of that Court was so far assented to, that the appellant obtained an order of that Court requiring the appellee to cancel and erase a judicial mortgage, which he had obtained to

secure the judgment enjoined in the State Court, and to accept in lieu thereof a personal bond and security in the Circuit Court. See Transcript, p. 15

Now if this Court should sustain the first assignment of error, the result would necessarily be, that the appellee would lose the benefit and security of his judicial mortgage, cancelled at the instance of the appellant, and also of the personal security substituted in lieu thereof, in the Circuit Court.

Respectfully Submitted.

Duncan & Connor

Atty's for Appellee.

COPY OF DECREE.

SUPREME COURT OF THE STATE OF LOUISIANA.

Clerk's Office, New Orleans, January 27th, 1879.

Lucius Phipps,
versus
Mrs. Ruth Snodgrass. } No. 6885.

ON APPLICATION FOR RE-HEARING.

Appeal from the Fourth District Court, Parish of Orleans.

Mr. Justice Spencer delivered the opinion and Decree of the Court in the words and figures following, to-wit:

"There is but one ground we deem necessary to notice. We held in this case that it was too late, after *judgment by* DEFAULT, or answer, to plead to the jurisdiction of the Court, *ratione personæ* the party being sued in New Or-

leans as an alleged resident of said City. We are aware that our immediate predecessors went, in effect, to the point of holding that a plea to the jurisdiction *ratione personæ*, could be made *at any time before judgment*, and was good cause to annul, *after final judgment in the cause!* See Richardson vs. Hunter, 23 A., 255; Alter vs. Pickett, 24 A., 515; 21 A., 258 and 551.

In our opinion such a doctrine is destructive of all certainty in judicial proceedings, subversive of elementary principles, and directly in conflict with numerous articles of the Code of Practice.

1st. It is destructive of all certainty in judicial proceedings. A defendant is cited before a Court having competency to try the subject matter, i. e. jurisdiction *ratione materiæ*. He appears, makes no exception to the jurisdiction, but answers to the merits, and contests vigorously the plaintiff's rights. Judgment is rendered against him below and on appeal. Under the doctrine we combat, he can at once turn about and sue to annul that judgment on the ground that he did not reside in the Parish where he was sued. How would a suitor ever know when he had obtained a binding judgment against his debtor?

2nd. The doctrine is subversive of elementary principles, common to the laws of all civilized countries. It is elementary and cannot be denied that the judgment terminates all questions which were, or which could have been urged, in defence. Yet according to the doctrine of our opponents, it does not conclude the defendant from pleading to the jurisdiction of the Court *ratione personæ*, although the Code says *that* exception or defence must be pleaded *in limine*, and before answer. Under this theory what becomes of the provisions of our law on the subject of *res adjudicata?* When and where will there be an end of law-suits?

3rd. It is directly in conflict with Arts. 93, 333, 334, 335 and 336 of the Code of Practice.

The first of these Articles provides: "If one be cited before a judge whose jurisdiction *does not extend to the place of his domicile* or of his usual residence, but *who is competent to decide the case brought before him, and he pleads*

to the merits, instead of declining the jurisdiction, thejudgment given shall be valid, except the defendant be a minor."

The other Articles mentioned, provide in effect, that this exception to the jurisdiction *ratione personæ*, must be pleaded *in limine* and before answer.

Have these plain and unambiguous Articles of the Code of Practice been expunged from it? Are they no longer parts of the law of procedure in this State? We are told that they have been abrogated by Article 162 of that Code. That Article provides: "It is a general rule in civil matters that one must be sued before his own judge, that is to say, before the judge having jurisdiction over the place where he has his domicile or residence, and shall not be permitted *to elect any other domicile or residence for the purpose of being sued, but this rule is subject to those exceptions expressly provided by law.*"

Is this Article repugnant to Articles 93, 333, 334, 335 and 336 of the Code? Is there no interpretation that will harmonize them? If there is, almost any principles require us to adopt that interpretation, for they are all Articles, and component parts of one statute.

Article 162 declares in its first paragraph, that one must, as a general rule, be sued at his domicile; but Article 93 declares if one be *actually sued elsewhere*, and plead to the merits, without declining the jurisdiction, he shall be bound by the judgment.

Article 162 declares that there are *exceptions* to its rules. Article 93 is one of those exceptions; and presents a wholly different case from that of last clause of the Article 162, which provides that no one shall be permitted *to elect* any other domicile *for the purpose of being sued.* Is it not manifest that this clause relates to cases when parties, by agreement and with a view to *a future suit*, designate a place to bring it. Article 93 relates to a case when a party *has already been sued.* The last part of Article 162 relates to cases when the parties elect domiciles for the purpose of *being sued in the future.* The "*election of a domicile for the purpose of being sued*," presupposes that the party has *not yet been sued*, and implies *the selection and designation* of a place of domicile, for the purpose of a *prospective suit.* It is this last which

the laws forbids, and which is wholly a different case from that of Article 93, which provides for a *suit actually pending*, and when there has been no previous election, selection, or designation of a domicile for the purpose of bringing it.

The evils intended to be prevented by this provision of Article 162 are well known. It was to prevent hard pressed debtors, from entering into contracts whereby they waived their domiciles, and elected in lieu thereof the counting rooms of their merchants in New Orleans, designating some clerk of their creditor, as agent, to receive service of legal process, and thereby in many instances being sold out of house and home before they knew suit had been brought. See Marqueze vs. LeBlanc, 29 A. 194, and School Board vs. Weber, 30 A. 595, concurring opinion of Justice Spencer, where this question is treated more at length.

The re-hearing is refused.

A true copy.

FRANK WALL,

Deputy Clerk.